United States Court of Appeals
for the Second Circuit

APPENDIX

affidavit of service

77-7037

B

P/S

In The

United States Court of Appeals

For The Second Circuit

◆

UNITED STATES COURT OF APPEALS
FILED
AUG 8 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs-Appellants,

-against-

GENERAL MOTORS CORPORATION, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York.

JOINT APPENDIX - VOLUME 1

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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS - APPENDIX VOLUMES (pp. i through xiii)

Note: The exhibits are reprinted in 4 Exhibit Volumes. The Joint Appendix consists of 16 volumes, as follows:

Volume No.	From Page A-	To Page A-
1	1	405
2	406	800
3	801	1200
4	1201	1600
5	1601	2000
6	2001	2400
7	2401	2800
8	2801	3200
9	3201	3600
10	3601	4000
11	4001	4400
12	4401	4800
13	4801	5200
14	5201	5599
15	5600	6000
16	6001	6405 (end)

VOLUME 1

Page

Docket Entries, consisting of pages 1-47 1

Complaint, filed 12/10/70 (doc. # 1 in the "Index to the Record on Appeal", hereinafter "doc."), pages 1-57, 74-104, 106-11 48

Answer of defendant General Motors Corp. ("GM") (doc. 626) 141

Answer of defendant Frederic G. Donner (doc. 624) 151

Answer of defendant James M. Roche (doc. 625) 157

Answer of defendant Bob Bain Chevrolet (doc. 466) 163

Answer of defendant Paul Batt Buick (doc. 412) 165

Answer of defendant Glen Campbell Chevrolet (doc. 421) . . 166

Answer of defendant Hamister-Gillogly Chevrolet (doc. 416) 168

Answer of defendant Paragon Oldsmobile (doc. 408) 170

Answer of defendant Niagara Frontier Automobile Dealers Association ("BADA") (doc. 417) 172

Page

Answer of Defendant General Motors Acceptance Corporation ("GMAC") (doc. 627) 174

Pages 1-2 of Interrogatories to plaintiffs by C.I.T. dated 2/17/71 (doc. 45) 180

Pages 1-2 of Interrogatories to plaintiffs by Niagara Falls Gazette - Set # 1, dated 5/14/71 (doc. 89) 182

Pages 5-8, 10 of GM's 1st set of interrogatories to Nabcor, dated 6/11/71 (doc. 99) 184

Page 2 of Schedule to plaintiffs' notice of deposition re Wilmington Trust Co. and officials, dated 11/13/71 (doc. 194) 189

GM notice of deposition (Mesirov and Gerson), dated 9/13/72 (doc. 334) 190

Transcript of Proceedings on 2/7/73, pages 6-9, 14, 46-47 (doc. 430) 195

Transcript of Proceedings on 2/14/73, pages 14-20, 27-30 (doc. 454) 202

Transcript of Proceedings on 3/2/73, pages 14-5 (doc. 441) 212

Plaintiffs' (1st) notice of motion and supporting aff't for preliminary injunction (Colonial Cadillac) filed 3/5/73, limited to: N/M pp. 1-3; FM Aff't: 3A-3B, 3E, 4-13, 17-20, and Exhibit M: P.O. dated 2/14/73 # 30106B1 of Col. Cad.; P.O. dated 2/14/73 32106B3; and Col. Cad. envelope postmarked 2/26/73 (doc. 689) 215

Transcript of Proceedings on 3/8/73, pages 11-2, 14-29 (doc. 431) 240

Transcript of Proceedings on 3/12/73, pages 37-40 (doc. 428) 258

Schedule A of GM-Ford notice of deposition (FM, AM, DS, Cucci, Turco, Heim, Jamele, Spector & Young) dated 3/22/73 (doc. 382) 262

Pages 11-12 of Person Aff't in support of plaintiffs' motion for preliminary injunction and related discovery, sworn to 3/23/73 (doc. 453) 263

Transcript of Proceedings on 3/23/73, pages 12, 30-50 (doc. 432) 265

Aff't of William G. Kemp, sworn to 4/9/73, filed 4/10/73 (doc. 669) 287

Page

Aff't of Lawrence F. Kelleher, sworn to 4/7/73 filed 4/10/73 (doc. 675) 306

Aff't of Lewis A. Kaplan in opposition to plaintiffs' class action motion, dated 6/28/73 (doc. 470) 313

Exhibits from depositions and preliminary injunction hearings referred to in joint memorandum of certain defendants in opposition to plaintiffs' motions for class action determination, undated (served 6/29/73) (doc. 722), as follows:

Ex. D from 1973 hearing, Unaudited financial statements of Nabcor as of 7/31/72 with report by National Tax Institute (see E-1448 in Exhibits Vol. 4)

Ex. E from 1973 hearing, Nabcor Offering Circular, dated 1/29/71, as amended 4/29/71 (see E-1273 in Exhibits Vol. 3)

Ex. H from 1973 hearing, Nabcor Marketing and Administration Manual, copyright 1969 (see E-1251 in Exhibits Vol. 3)

Ex. S, Nabcor - Summary of Nabcor cash receipts and disbursements, unaudited, for the period 8/1/72 to 3/8/73, compiled for GM's attorneys by Price, Waterhouse & Co. (see E-1714 in Exhibits Vol. 4)

Ex. 44, 1-page typeset description of the Nabcor System (see E-1249 in Exhibits Vol. 3)

Ex. 46, 4-page brochure "The Nabcor System", an Automobile Consumer Service (see A-479 in Appendix Vol. 2)

Ex. 43, 1-page typeset profit projection for Nabcor Area Distributor (see E-1250 in Exhibits Vol. 3)

VOLUME 2

Ex. 15, letter from Carl E. Person to plaintiff Louis Jamele, dated 11/21/70 406

Ex. 8, Nabcor Offering Circular (original), dated 1/29/71 412

Excerpts from depositions and preliminary injunction hearings referred to in joint memorandum of certain defendants in opposition to plaintiffs' motions for class action determination, undated (served 6/29/73) (doc. 723), as follows:

Page

Exhibits from FM Deposition:

Ex. 39, Nabcor Training Manual No. 1 (see E-1118 in Exhibits Vol. 3)

Ex. 41, Nabcor Training Manual No. 2 438

Ex. 44, 1-page typeset description of the N System (see E-1249 in Exhibits Vol. 3)

Ex. 46, 4-page brochure "The Nabcor System", an Automobile Consumer Service 479

Ex. 47, 4-page brochure for Nabcor customers 483

Ex. 49, 1-page information sheet for brokers 487

Ex. 53, Nabcor Price Book 488

Exhibits from AM Deposition:

Ex. 9, Nabcor Offering Circular, dated 1/29/71, as amended 4/29/71 (see E-1273 in Exhibits Vol. 3)

Exhibits from Cucci Deposition:

Ex. 1, Cucci franchise agreement 558

Exhibits from Heim Deposition:

Ex. 2, Heim franchise agreement 563

Exhibits from Jamele Deposition:

Ex. 1, Jamele franchise agreement 571

Exhibits from Mesirov Deposition:

Ex. 7, 1970 Nabcor Price Book 572

Exhibits from Strimple Deposition:

Ex. 1, Master Distribution Agreement with Strimple, Bolling and Kuhaneck (see E-842 in Exhibits Vol. 2)

Exhibits from Turco Deposition:

Ex. 1, Turco Master Franchise Agreement 608

Ex. 3, Nabcor Franchise Agreement for Master Broker . 615

Exhibits from Young Deposition:

Ex. 1, letter to Nabcor from Young's attorney 621

Page

Ex. 7, Young's Master Broker Agreement (see E-648 in Exhibits Vol. 2)

Exhibits from 1973 Evidentiary Hearing:

Ex. E, Nabcor Offering Circular, dated 1/29/71, as amended 4/29/71 (see E-1273 in Exhibits Vol. 3)

Ex. H, Nabcor Marketing and Administration Manual, copyright 1969 (see E-1251 in Exhibits Vol. 3)

Transcript of Proceedings of the 1973 Evidentiary Hearing on 3/19/73, pages 3-4, 8-21, 52-71, 76-78, 88-110, 112-4, 116-27, 132-6, 139-44, 148-62, 164-75 (doc. 429) 623

Transcript of Proceedings of the 1973 Evidentiary Hearing on 4/10/73, pages 183-6, 190-6, 200, 203-6, 208-12, 215-43, 259-61, 266-303, 306-7, 313-41a (doc. 439) 738

(Continued in)

VOLUME 3

Continuation of above Transcript 801

Transcript of Proceedings on 11/7/73, pages 2-5, 22, 36-61, 68-70, 87-89 (doc. 903) 860

Transcript of Proceedings on 11/14/73, pages 46-66 (doc. 499) 898

Aff't of Lewis A. Kaplan in opposition to plaintiffs' class action motion, dated 12/20/73 (doc. 494) 919

Transcript of Proceedings on 2/26/74, pages 37-54 (doc. 538) 933

Pages 24-6 of plaintiffs' notice of cross-motion dated 4/3/74 with Person aff't sworn to 4/3/74 (doc. 503) . 951

Transcript of Proceedings on 4/12/74, pages 13-8 (doc. 539) 954

Pages 3-10 of FNCB's 1st set of interrogatories to plaintiffs with request to produce documents, served 4/19/74 (doc. 507) 960

Transcript of Proceedings on 4/19/74, pages 3-58, 65-70 (doc. 540) 968

Opinion # 40560 (52-pages) by Judge Griesa, dated and filed April 5, 1974 (doc. 504) 1031

Page

NY Times' 1st set of interrogatories to plaintiffs with request to produce documents, dated 5/13/74, pages 5-12 (doc. 513) 1083

Plaintiffs' request for document production, dated 6/21/74 (GM, GMAC, et al.) (doc. 522) 1091

Page 1 and Schedule A of GM's notice of deposition, dated 7/11/74 (Dennison, Cuccia, O'Brien, Bolling, Kuhaneck, Nash, Snyder - 7) (doc. 904) . . . 1095

Transcript of Proceedings on 7/12/74, pages 3-44 (doc. 603) 1098

Pages 5-7 of plaintiffs' interrogatories to defendant dealers and to GM and Ford re dealer divisions, dated 7/19/74 (doc. 529) 1140

Pages 5-6 of plaintiffs' interrogatories to GMAC, dated 7/19/74 (doc. 530) 1143

Pages 4-8 of plaintiffs' interrogatories to defendants NY BBB, Westchester BBB, Western NY BBB and National BBB, dated 7/19/74 (doc. 531) 1145

Pages 6-15 of plaintiffs' interrogatories to defendants GM, Ford, Chrysler and AMC, dated 7/19/74 (doc. 532) . 1150

Pages 1-6 of plaintiffs' interrogatories to FNCB, dated 7/19/74 (doc. 533) 1160

Pages 3-8 of plaintiffs' interrogatories to BADA, dated 7/19/74 (doc. 534) 1166

Pages 5-8 of plaintiffs' interrogatories to defendants Buffalo Courier-Exp., NY News, NY Times, Newsday and Westch-Rockland Newspapers, dated 7/19/74 (doc. 535) . 1172

Pages 1-18 of plaintiffs' statement identifying officials and employees of defendants to be deposed by plaintiffs, dated 7/25/74 (doc. 536) 1176

Order permitting plaintiffs to conduct depositions by tape recorder (excluding notice of settlement), dated 7/31/74 (doc. 543) 1194

Schedule A of plaintiffs' notice of deposition of FNCB with request to produce documents, dated 8/1/74 (doc. 546). 1198

Pages 1-2 and Schedule A (A-1 and A-2) of plaintiffs' notice of deposition of GM, et al., (28 GM officials and employees), dated 8/22/74 (doc. 547) . . 1200

Page

VOLUME 4

Transcript of Proceedings on 9/9/74, pages 2-28, 30-1 (doc. 599) 1204

Pages 2-11 of GM's interrogatories to plaintiffs with request to produce documents, dated 9/16/74 (doc. 615) 1233

Answers and objections by Midtown Chevrolet and GM to plaintiffs' "dealer" interrogatories, dated 9/18/74 (doc. 562) 1243

GMAC's answers and objections to plaintiffs' interrogatories, dated 9/18/74 (doc. 563) 1288

Responses of defendant GM to plaintiffs' interrogatories addressed to the auto dealer defendants, dated 9/18/74 (doc. 564) 1382

Transcript of Proceedings on 9/20/74, pages 57-67, 70-1, 74 (doc. 600) 1508

Transcript of Proceedings on 9/27/74, pages 19-31, 35-40, 44-9, 54-5 (doc. 601) 1522

Additional answers of GM to plaintiffs' interrogatories addressed to dealers, dated 9/18/74 (doc. 579) 1549

Additional answers of Midtown Chevrolet to plaintiffs' dealer interrogatories, dated 9/30/74 (doc. 577) . . . 1551

Plaintiffs' witness list, dated 10/8/74 1561

Transcript of Proceedings on 10/10/74, pages 3-29, 32-46 (doc. 602) 1573

(Continued in)

VOLUME 5

Continuation of above Transcript 1601

Schedule A (A-1, A-2, A-3) of plaintiffs' notice of deposition (3 BBB's & NY ADA, 13 persons), dated 10/14/74 (doc. 582) 1615

GM's further responses to plaintiffs' interrogatories, dated 10/14/74 (doc. 584) 1618

Transcript of Proceedings on 12/6/74, pages 3-7, 13 (doc. 639) 1647

Transcript of Proceedings on 12/13/74, pages 40-1 (doc. 640) 1653

Page

Schedule A (A-1, A-2) to plaintiffs' notice of deposition (Newsp. & BBB defendants) with request to produce documents, dated 9/16/74 (doc. 614) 1655

Plaintiffs' (2nd) notice of motion and motion for a preliminary injunction, a partial summary judgment and other relief, dated 1/8/75, with memo. end., limited to N/M pages 1-3, Person aff't, pages 1-36, Exhibits B, D, E, F, G, H (without exhibits), L, M, N, O, P, Q (page 1 only) and R, (doc. 617) 1657

Plaintiffs' interrogatories with request to produce documents (auto mfrs., GMAC & dealers), dated 1/20/75 (doc. 619) 1735

Transcript of Proceedings on 1/20/75, pages 27-70 (doc. 643) 1743

Transcript of Proceedings on 1/24/75, pages 1-7 (644) . . . 1787

Aff't of Carl E. Person in further support of plaintiffs' motion for a preliminary injunction and other relief, dated 1/27/75 (doc. 632) 1794

Aff'ts of Kleinbard, Leary, Berg, Zenoff, Rosdeitcher, Kaplan and Ross in opposition to plaintiffs' motion for a preliminary injunction and other relief, dated 3/10/75, etc. (doc. 648) 1798

Person supplemental aff't in further support of plaintiffs' motion for a preliminary injunction, a partial summary judgment and other relief, sworn to 3/20/75, pages 1-6, 14-5, Moore aff't and Rose aff't (doc. 649) 1841

Transcript of Proceedings on 3/21/75, pages 3-13, 17-21 (doc. 710) 1858

Transcript of Proceedings on 3/27/75, pages 68-73 (doc. 711) 1874

Schedule A, "How Activities Directed against Nabcor or a Nabcor Franchisee Adversely Affects Nabcor and every other Franchisee", part of plaintiffs' answer to interrogatories 15, 16 and 17 to GM's "Second Set of Interrogatories with request to produce documents", and Turco Ex. # 4 of 4/3/73 . . . 1880

Order of the United States Court of Appeals for the Second Circuit dismissing appeal, dated 5/27/75 (no doc. no.) 1911

Transcript of Proceedings on 5/28/75, pages 4-7, 11-13, 21-2 (doc. 745) 1912

Page

Schedule A, pages 3-4 of plaintiffs' notice of deposition (GM, Ford, NADA) with request to produce documents (20 officials), dated 10/31/75 (doc. 757) 1921

Transcript of Proceedings on 11/6/75, pages 32-6, 45 (doc. 766) 1923

Transcript of Proceedings on 11/13/75, pages 52, 62-4 (doc. 780) 1929

Transcript of Proceedings on 11/20/75, pages 2-10, 49-54, 62 (doc. 781) 1933

Plaintiffs' pretrial brief, dated 1/28/76, pages 4-10, 11-8, 37-40, 45-50, 53-60, 61-6, 94, 98-100, 113-6, 119-20, 157-8, 161-3, 166-7, 175-9, 181-7, 192-6, 201-2, 206-305 (doc. 759) 1949

(Continued in)

VOLUME 6

Continuation of above plaintiffs' pretrial brief 2001

Transcript of Proceedings on 3/19/76, pages 2, 7-8 (doc. 782) 2124

Transcript of Proceedings on 3/22/76, pages 11-2, 30-78, 84-6 (doc. 783) 2127

Plaintiffs' notice of deposition of GM (7 persons), dated 4/30/76, Schedule A only (doc. 773) 2181

Pages 1-21 of plaintiffs' communications interrogatories, dated 6/2/76 (doc. 784) 2182

Transcript of Proceedings on 8/4/76, pages 11, 34-6 (doc. 881) 2203

Aff't of Martin Kleinbard in support of motion to modify subpoena duces tecum, dated 9/1/76 (doc. 902) 2207

Transcript of Proceedings on 9/8/76, pages 21, 28-32 (doc. 881) 2223

Memorandum decision # 45084 by Judge Griesa, dated 9/14/76 (re Donner and Roche depositions) (doc. 805) 2229

Portions of the transcript of the evidentiary hearing on the preliminary questions from 10/6/76 to 10/20/76

Page

10/6/76: 2-6, 8-10, 29-42, 48-87, 95, 119-22, 126, 130-95 (doc. 881) 2232

10/7/76: 201-26, 240-82, 285-90, 298-308, 334-5, 352-3 (doc. 881) 2367

(Continued in)

VOLUME 7

Continuation of above Transcript (10/7/76) 2401

10/12/76: 394-6, 400-11, 416-8, 477-8, 487-93, 518-22, 533, 541-6 (doc. 881) 2457

10/13/76: 569-71, 627-32, 686-97, 700, 703-6, 709-10, 713-32 (doc. 881) 2496

10/14/76: 752-856, 860-1 (doc. 882) 2544

10/15/76: 871-959 (doc. 882) 2651

10/19/76: 977-96, 1000-30, 1046-52, 1056-60, 1068-70, 1073-81, 1087-90, 1092-4, 1096-1106, 1121-2, 1125-30 (doc. 882) 2740

(Continued in)

VOLUME 8

Continuation of above Transcript (10/19/76) 2801

10/20/76: 1164-80 (doc. 882) 2841

Portions of the trial transcript, from 10/20/76 to 12/6/76, including affidavit of prejudice:

10/20/76: 99, 105-7, 130-47, 153-6, 161-8 (doc. 917) . 2859

10/26/76: 178-94, 203-14, 229-37, 242-5, 255-79, 303-8, 311-48 (doc. 917) 2893

10/27/76: 350-91, 397-403, 409-26, 433-500 502-22 (doc. 917) 3004

10/28/76: 525-31, 539-41, 561-90, 592-629, 632-53, 666-75, 693-9 (doc. 917) 3158

(Continued in)

Page

VOLUME 9

Continuation of above Transcript (10/28/76) 3201

10/29/76: 703-7, 716-44, 746-84, 786-95, 800-7, 811-3, 816-45, 853-65, 867-74, 879-80 (doc. 918) 3275

11/1/76: 901-12, 918-80, 985-1005, 1009, 1013, 1016, 1019, 1021, 1025-39 (doc. 918) 3422

11/3/76: 1043-72, 1074-89, 1095-1255 (doc. 919) . . . 3538

(Continued in)

VOLUME 10

Continuation of above Transcript (11/3/76) 3601

11/4/76: 1257-65, 1271-1323, 1327-51 (doc. 919) . . . 3745

11/7/76: 1353-1437 (doc. 919) 3833

11/8/76: 1438-95, 1497-1517, 1524-27, 1530-4, 1536-8, 1541-2, 1548-80, 1582-3, 1585-90, 1593 (doc. 919) 3925

(Continued in)

VOLUME 11

Continuation of above Transcript (11/8/76) 4001

11/9/76: 1624-7, 1630-1, 1637-1740, 1747, 1751-7, 1760-79 (doc. 919) 4053

11/11/76: 1778-80, 1784-86, 1791-7, 1802, 1810-22, 1833-8, 1841-5, 1848, 1851-93, 1895, 1904-18, 1923, 1927-30, 1933-76 (doc. 920) 4190

11/12/76: 1980-6, 1992-4, 1999-2040, 2043, 2051, 2053-8, 2061-86, 2090-2127 (doc. 920) . . . 4337

(Continued in)

VOLUME 12

Continuation of above Transcript (11/12/76) 4401

11/15/76: 2134-44, 2147-51, 2153-7, 2159-93, 2198-2229, 2231-40, 2242-2335 (doc. 920) 4461

Page

11/16/76: 2338-40, 2345-50, 2352-77, 2380-85, 2387-90, 2397-2409, 2414-26, 2428-29, 2431-46, 2448-64 (doc. 918) 4654

11/17/76: 2466-90, 2494-2653 (doc. 918) 4760

(Continued in)

VOLUME 13

Continuation of above Transcript (11/17/76) 4801

11/18/76: 2655-2718, 2730-80, 2801-3, 2808-36, 2838-9, 2842-72 (doc. 921) 4945

11/19/76: 2874-2924 (doc. 921) 5125

11/22/76: 2925-41, 2955-61, 2965-71, 2978-95, 3001, 3004-5, 3008-25, 3028-96 (doc. 921) 5176

(Continued in)

VOLUME 14

Continuation of above Transcript (11/22/76) 5201

11/23/76: 3098-3252 (doc. 921) 5315

11/24/76: 3255-3384 (doc. 921) 5470

VOLUME 15

F. Maiorana aff't of 11/29/76 under 28 U.S.C. § 144 with certificate of counsel, filed 11/29/76 (doc. 878) 5600

11/29/76: 3386-3478, 3485-3527 (doc. 922) 5605A

11/30/76: 3532-3687 (doc. 922) 5737

12/1/76: 3689-3874 (doc. 922) 5893

(Continued in)

Page

VOLUME 16

Continuation of above Transcript (12/1/76) 6001

12/2/76: 3875-4020 (doc. 922) 6079

12/3/76: 4021-78 (doc. 922) 6225

12/6/76: 4079-4194 (doc. 922) 6283

Final judgment, dated 12/15/76 entered 12/16/76, with 1/4/77 handwritten note taxing costs of $26,913.52 in favor of GM, excluding notice of settlement (doc. 879) 6398

Plaintiffs' notice of appeal from final judgment of 12/16/76, dated 1/14/77 (doc. 888) 6401

Memorandum of Judge Griesa (re costs) dated 4/11/77 (doc. 704) 6402

##

A

70 CIV. 5421

JUDGE GRIESA

D. C. Form No. 1

TITLE OF CASE

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& West. Rockland Newspapers, one Excha
~~BREARLEY PIATT SCHMIDT HART & FRITZ~~ (
~~120 Broadway (deft Bulletin Co.)~~

CAHILL GORDON ~~[illegible]~~ REINDEL ~~[illegible]~~
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~~LORD DAY & LORD~~ CAHILL, GORDON
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~~New York 10004~~ (N.Y. Times and Eveni
(as of 9-10-71)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	D
J.S. 5 mailed	Clerk		12/11/70	Carl E Person	15	
			12/15/70	U.S. Treas		15
			1/21/71	[illegible]		
J.S. 6 mailed	Marshal		1/13/71	[illegible]		
			3/21/75	Person	5	
Basis of Action:	Docket fee		3/25/75	Treas		
CONSPIRACY TO DRIVE PLAINTIFFS OUT OF BUSINESS. $1,000,000	Witness fees					
Action arose at:	Depositions					

JAN 21 1972

JAN 21 72

BEST COPY AVAILABLE

70 Civil 5421

NATIONAL AUTO BROKERS CORP et al -v- GENERAL MOTORS CORP et al.

CIVIL DOCKET

ADDITIONAL PAGE FOR ATTYS ONLY.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
	Hetzelt, Watson, McGarvey & Hetzelt 1904 Liberty Bank Bldg., Buffalo, N.Y. 14202 852-3540 for deft Hamister-Gillogly Chevrolet AND Frontier Automobile Dealers Assoc.	
	Breed, Abbott & Morgan 1 Chase Manhattan Plaza, NYC 10005 944-4800 for The Better Business Bureau of Metropolitan N.Y., Better Business Bureau of Westchester County, and National Better Business Bureau, Inc.	
	Blari, Martin & Messina Liberty Bank Blcg. Buffalo, N.Y. 853-4187 for Al Maroone Ford, Inc.	
	Sidney A. Weisberg 10 East 40th St, NYC 10016 Mu 3-9100 for Paragon Oldsmobile, Inc.	
	Burns, Van Kirk, Greene & Kafer 521 Fifth Ave, NYC 10017 972-0500 for Buffalo Courier-Express, Inc.	

Townley Updike Carter + Rodgers
220 E. 42nd St. NYC 10017
(defts Hoffman's Central Chevrolet Co
Niagara Falls Gazette +
Westchester Rockland Newspapers, Inc.).

Local Counsel

CAMPBELL HYMAN & KANAREK
2 Hamilton Ave- New Rochelle, N.Y. 10801
(914) 632- 4030

B

NATIONALAUTO BROKERS VS. GENERAL MOTORS CORP. ET-AL **70 CIV. 5421** A 3

(C #2)

DATE	PROCEEDINGS	Date Of Judgment
0-70	Filed Complaint. SUMMONS ISSUED.	
Dec.17-70	Issued six (6) additional summonses.	
Jan.7-71	Filed ANSWER of Westbrook Trust Co. to complaint.	RP
Jan 7,71	Filed stip and order that time for deft Wilmington Trust Co. to Answer the complaint is extended to 2-8-71 McLean J.	
an 7,71	Filed stip and order that time for deft News-Jornal Co. to Answer the complaint is extended to 2-8-71 McLean J.	
an 7,71	Filed stip and order that time of deft C.I.T. Financial Corp. to Answer the complaint is extended to 3-1-71 McLean J.	
Jan 8,71	Filed Notice of Appearance for deft Ruckle Pontiac Co. Inc.	
an 8,71	Filed stip and order that time of deft Bank of Delaware to Answer the complaint be extended to 2-1-71 McLean J.	
Jan 11,71	Filed ANSWER of Kem Dengler Chevrolet Oldsmobile Inc. to complaint.	B&L
Jan.11-71.	Filed stipulation and order time of defts. Gothamford,Inc. to answer complaint to 3/1/71. So ordered. Cannella, J.	
an 13,71	Filed Notice of Appearance for defts N.Y. Times and Evening Star Newspaper Co.	
an 13,71	Filed Notice of Appearance for deft News Journal Co.	
Jan 13,71	Filed Notice of Appearance for deftx Wilmington Trust Co.	
Jan.12-71	Filed stipulation and order extending deft. New York News Inc.'s time to answer complaint to 3/1/71. So ordered. Cannella, J.	
Jan.13-71	Filed stipulation and order extending deft. Curry Chevrolet Sales & Service, Inc.'s time to answer complaint, or make any motion, to 3/1/71. So ordered.Cannella, J.	
Jan.13-71	Filed stipulation and order extending deft. Landmark Communications, Inc.'s time to answer or make any motion to 3/1/71. Deft. Landmark Communcations, Inc., appears specially. So ordered. Cannella, J.	
Jan.13-71	Filed stipulation and order extending deft. Mark Buick Corp.'s time to answer complaint to 3/1/71. So ordered. Cannella, J.	
Jan.14-71	Filed stipulation and order extending deft. Chrysler Corp.'s time to answer complaint or make any motion to 3/1/71. So ordered. Cannella, J.	
Jan.14-71	Filed stipulation and order extending time of defts. The Evening Star Newspaper Co. and The New York Times Co.Inc. to answer complaint to 3/1/71. So ordered. Cannella, J.	
Jan.13-71	Filed stipulation and order extending deft.Newsday,Inc.'s time to answer complaint to 3/1/71. So ordered. Cannella, J.	
Jan.18-71	Filed stipulation and order extending defts. General Motors Corp., General Motors Acceptance Corp., Frederic G. Donner and James M. Roche's time to answer complaint to 3/1/71. So ordered. Cannella, J.	
Jan.18-71	Filed stipulation and order extending time of deft. Dayton Newspapers, Inc. to answer or make any motion to 3/8/71. So ordered. Cannella, J.	
Jan.19-71	Filed Notice of Deposition. to take deposition of plaintiffs listed on schedule.	
Jan.19-71	Filed stipulation and order extending defendants Hallman Central Chevrolet Co.Inc., Niagara Falls Gazette and Westchester RocklandNewspapers,Inc.'s time to answer complaint to 3/1/71. So ordered. Cannella, J.	
an 19,71	Filed stip and order that time of deft Call Chronicle Newspapers Inc. to Answer the complaint is extended to 4-1-71 Cannella J.	
Jan 19,71	Filed stip and order that time of defts Better Business Bureau of N.Y., Better Business Bureau of Westchester County and National Business Bureau Inc. to Answer the complaint is extended to 3-1-71 Cannella J.	
Jan 19,71	Filed stip and order that time for deft First National City Bank to Answer the complaint is extended to 3-1-71 Cannella J.	
Jan 21,71	Filed stip and order that time of deft Easton Publishing Co. to Answer the complaint is extended to 4-1-71 Cannella J.	
Jan 21,71	Filed stip and order that time of deftCounty Trust Co. to Answer the complaint is extended to 3-1-71 Cannella J.	C

Continued on next page.

70 Civil 5421 National Auto Brokers Corp. vs. General Motors Corp. et al 70 Civil 5421

D. C. 110 Rev. Civil Docket Continuation

GRIESA, J.

DATE	PROCEEDINGS
Jan 21,71	Filed stip and order that time of deft Al Maroone Ford Inc. to Answer the complaint is extended to 3-1-71 Cannella J.
Jan 20,71	Filed stip and order that time of deft Ruckle to Answer the complaint is extended to 3-1-71 Cannella J.
Jan 20,71	Filed stip and order that time of deft. Robin Ford Sales Inc. to Answer the complaint is extended 3-1-71 Cannella J.
Jan.25-71	Filed Order substituting Guzik and Boukstein as attys. for deft. Westbrook Trust Co. Bryan, J.
Jan.26-71	Filed stipulation and order adjourning deposition of plaintiffs. So ordered. Bryan, J.
Jan.26-71	Filed stipulation and order withdrawing answer of deft. Westbrook Trust Co.; and extending deft. Westbrook's time to answer complaint to 3/1/71. So ordered. Bryan, J.
Jan.26-71	Filed stipulation and order extending deft. Dow Jones & Co.Inc.'s time to answer complaint to 3/1/71. So ordered. Bryan, J.
Jan.26-71	Filed stipulation and order extending deft. The Forest City Publishing Co. sued herein as "The Plain Dealer" to answer complaint, including a motion to dismiss for lack of jurisdiction, to 4/2/71. So ordered. Bryan, J.
Jan 28,71	Filed deft Bulletin Co. Notice of Appearance.
Jan.28-71	Filed stipulation and order extending deft. Marty Motors Corp.'s time to answer complaint to 3/1/71. So ordered. Bryan, J.
Jan.28-71	Filed stipulation and order extending deft. Bano Buick, Inc.'s time to answer complaint to 3/1/71. So ordered. Bryan, J.
Feb.3,71	Filed stip and order that time of deft Bulletin Co. to Answer the complaint is extended to 4-1-71 Bryan J.
Feb.5-71	Filed stipulation and order extending defts. Hamister-Gillogly Chevrolet, Inc. and Niagara Frontier Automobile Dealers Assn. Inc.'s time to answer complaint to 3/1/71. Bryan, J.
Feb.10-71	Filed stipulation and order adjourning depositions of plaintiffs to six weeks from dates specified in the notice, etc. So ordered. Wyatt, J.
Feb.10-71	Filed Order on motion to enlarge time. The time within which pltfs. shall move for an order for a determination of class action is enlarged to including 7/15/71; further ordered that no such motion shall be made by the pltfs. prior to 5/17/71 except to the extent deemed necessary by the plaintiffs to protect pltfs'. claimed representation of the alleged classes from conflicting motions or claims in this or other actions. Wyatt, J. (mailed notice)
Feb.17-71	Filed Notice of Appearance for The Buffalo Courier-Express, Inc.
Feb.22-71	Filed interrogatories addressed to pltfs. by C.I.T. Financial Corp.
Feb.25-71	Filed stipulation and order extending defts. General Motors Corp., General Motors Acceptance Corp., Frederic G. Donner and James M. Roche's time to 4/1/71. So ordered. Frankel, J.
Mar.3-71	~~Filed stipulation and order extending deft. The County Trust Co.'s time to answer complaint to 4/1/71. So ordered. Frankel, J.~~
Mar 4,71	Filed stip and order that time of deft, Ruckle to Answer the complaint is extended to 4-1-71
Mar 3,71	Filed stip and order that time of deft Bank of Delaware to Answer the complaint is extended to 4-1-71 Frankel J.
Mar.12-71	Filed Notice of Appearance for deft. Associates Discount Corp. of Del. Inc.
Mar.22-71	Filed Notice of Motion re: Dismiss by Suburban Trust Co. Ret. 3/30/71
Mar.22-71	Filed Notice of Motion re: Dismiss by Citizens Bank & Trust Co. Ret. 3/30/71.
Mar.22-71	Filed Notice of Motion re: Dismiss by Wilmington Trust Co. Ret. 3/30/71.
Mar.22-71	Filed Notice of Motion re: Dismiss by The News Journal Co. Ret. 3/30/71.
Mar.22-71	Filed Memorandum in support of the News Journal's motion to dismiss.
Mar.22-71	Filed Joint " " " " " motion by Citizens Bank & Trust Co. of Md.

continued next page

DATE	PROCEEDINGS	Date Order Judgment N
19-71	Filed stipulation and order extending plaintiffs time to answer Interrogatories to 4/1/71. So ordered. Bonsal, J.	
r.29-71	Filed Memorandum in opposition to the News Journal's Motion to dismiss.	
r.29-71	Filed Memorandum in opposition to motions to dismiss by the Citizens Bank & Trust Co. of Maryland, The Wilmington Trust Co., and The Suburban Trust Co.	
ar.29-71	Filed copy of order extending time, and notice of entry. (to 4-1-71).	
ar.29-71	Filed Interrogs. by pltfs.addressed to Citizens Bank& Trust Co. of Md., Wilmington Trust Co. and Suburban Trust Co.	
ar.29-71	Filed Interrogs. addressed to News-Journal Co. by Plaintiffs.	
ar.29-71	Filed copy of order on motion to enlarge time to 7/15/71 with notice of entry.	
ar.30-71	Filed stipulation and order extending time of each defendant who has been served to answer complaint to 7/15/71,etc. So ordered. Cooper, J.	
pr.2-71	Filed stipulation and order extending plaintiffs' time to answer interrogatories addressed to plaintiffs by C.I.T.Financial Corp. to 5/1/71. So ordered. Cooper, J.	
pr.2-71	Filed stipulation and order extending deft. The County Trust Co.'s time to answer complaint to 5/1/71. So ordered. Cooper,J.	
pr.5-71	Filed Answers of Pltfs.National Auto Brokers Corp., FrankMaiorana and Anthony Mairana, to Interrogatories.	
pr.6-71	Filed stipulation and order extending each defendant who has been served summons and complaint time to answer to 7/15/71, etc.etc. So ordered. Metzner, J.	
pr.14-71	Filed deft Notice of Motion. Re: Dismiss as to Curry Chevrolet Sales Ret. 5-4-71	
pr.14-71	Filed Memorandum in support of motion to dismiss by Curry Chevrolet Sales.	
pr.23-71	Filed stipulation and order extending time for certain defendants to object or answer interrogatories (Set No.1) until 20 days after entry of orders denying the motions of said defendants brought on by notices of motion dated 3/19/71. So ordered, Motley, J.	
.29-71	Filed Notice of Motion re: Dismiss Complaint by deft. Dayton Newspapers - Ret. 5/11/71.	D&M.
Apr.29-71	Filed Memorandum of Law in support of motion of deft. Dayton.	
Apr.30-71	Filed stipulation and order extending deft. The Forest City Publishing Co.'s time to make any motions, to 20 days from date of entry of court order on the pending motion to dismiss by the News Journal Co. So ordered. Motley, J.	
ay 3-71	Filed Notice of Motion re: Dismiss Complaint Ret. 5/18/71.by deft.Westbrook Trust Co.	[illegible]
ay 3-71	Filed Memorandum in support of motion.	
ay 4-71	Filed Answers to Interrogatories addressed to Pltf. Courtsey Auto Brokers.	
May 5-71	Filed MEMO.END. on motionpapers filed 4/14/71. Motion granted on consent. SETTLE ORDER ON NOTICE. Tenney, J.	
ay 10-71	Filed Affidavit of Frank Maiorana in opposition to motion to dismiss.	
ay 10-71	Filed Memorandum in opposition to motion by deft. Dayton Newspapers to dismiss.	
ay 10-71	Filed stipulation and order extending of defts. Easton Publishing Co. and Call-Chronicle Newspapers Inc. time to make a motion, to the 20th day following entry of an order disposing of the motions to dismiss by Wilmington Trust Co.,etc. So ordered, Tenney,J.	
ay 10-71	Filed Interrogatories addressed to deft. Dayton Newspapers, Inc. by Pltfs.Set No. 1.	
May 12-71	Filed ORDER granting motion of Curry Chevrolet Sales and Service,Inc.; ordered that service of process on Curry Chevrolet Sales and Service,Inc. is quashed and voided and the action dismissed without prejudice to plaintiffs, as to Curry Chevrolet Sales and Service,Inc. Tenney, J.(mailed notice).	
ay 10-71	Filed Reply Memorandum on behalf of Dayton Newspapers, Inc.	
ay 13-71	Filed MEMO.END. on motion papers filed 4/29/71. Motion denied, following argument, with leave to renew motions upon the completion of the interrogatories. So ordered. Tenney, J.	

continued next page

E

D. C. 110 Rev. Civil Docket Continuation

GRIESA, J.

DATE	PROCEEDINGS
May 14-71	Filed Interrogatories by pltfs. addressed to Westbrook Trust Co.
May 14-71	Filed Interrogatories by Pltfs. addressed to General Motors Corp., Ford Motor Co. and General Motors Acceptance Corp.
May 14-71	Filed Affidavit in opposition to motion to dismiss.
May 14-71	Filed Memorandum in opposition to motion to dismiss by Westbrook Trust Co.
May 14-71	Filed stipulation and order extending deft. Bulletin Co.'s time to make motions to 7/15/71. So ordered. Tenney, J.
May 17-71	Filed stipulation adjourning motion now ret. 4/18/71 to 5/25/71.
May 18-71	Filed Interrogatories addressed to pltfs. by Niagara Falls Gazette Set. No. 1
May 18-71	Filed Interrogatories addressed to pltfs. by Westchester Rockland Newspapers, Inc.
May 18-71	Filed Interrogatories addressed to pltfs. by Hallman's Central Chevrolet Co. Inc.
May 18-71	Filed Designation of Attorneys, pursuant to Genl. Rule 4 for Hallman's Central Chevrolet Co., Inc., Niagara Falls Gazette, and Westchester Rockland Newspapers, Inc.
May 20-71	Filed copy of order filed 5/12/71 with notice of entry.
May 25-71	Filed Joint Reply Memorandum by Pltfs. inopposition to motions to dismiss by Citizens Bank& Trust Co. of Maryland, etc.
May 25-71	Filed Affidavit of Carl E. Person in opposition to motions to dismiss.
May 27-71	Filed MEMORANDUM AND ORDER. The decisionon the motion is postponed pending completion of the discovery efforts plaintiffs are now conducting. In the meantime, of course, the movant's time to answer is correspondingly postponed. Either side may apply, on reasonable notice and appropriate supplementary paper for further consideration of the motion and decision thereof by the undersig So ordered. Frankel, J. (mailed notice).
May 28-71	Filed stipulation and order extending time of certain defendants to answer complaint. So ordered. McGohey, J.
Jun 4-71	Filed Designation of Attorneys upon whom service of papers may be made. Philips & Mushkin, 230 Park Ave. NY 10017 for defendant.
Jun 14-71	Filed First Set of Interrogatories. to Carl E. Person, Atty. for Pltf. National Auto Brokers Corp.
Jun 14-71	Filed First Set of Interrogs. to Carl E. Person, Atty for Pltfs. Courtesy Auto Brokers, General Auto Sales, etc.
Jun 16-71	Filed Objections of Ford Motor Co. to Plaintiffs' Interrogs. dated 5/13/71.
Mar. 30-71	Filed Joint Reply Memorandum by Citizens Bank& Trust Co. of Maryland, Wilmington Trust Co., The Suburban Trust Co., and The News-Journal Co.
Jun 17-71	Filed Interrogatories addressed to News-Journal Co. by Plaintiffs.
Jun 17-71	Filed Affidavit of The Citizens Bank& Trust Co.
Jun 17-71	Filed Interrogatories addressed to deft. Dayton Newspapers, Inc. by Pltfs. Set No. 1
Jun 17-71	Filed OPINION #37731. Cooper, J. The motions to dismiss for lack of jurisdiction and improper venue denied with leave to renew following discovery now being undertaken by plaintiffs. So ordered. (mailed notice).
Jun 18-71	Filed stipulation and order modifying order of Judge Wyatt filed 2/10/71, by changing the dates May 17, 1971 and July 15, 1971, to July 15, 1971 and September 15, 1971, respectively, wherever each such date appears in the order. So ordered. Wyatt, J.
Jun 22-71	Filed Change of Address of Carl E. Person, counsel to Pltfs. to One Fifth Ave. NY 10003
Jun 23-71	Filed stipulation and order extending pltfs. time to answer or object to interrogs. to 6/30/71. McLean, J.
Jun 23-71	Filed stipulation and order extending deft. Bank of Delaware's time to answer complaint to 9/15/71. So ordered. McLean, J.
Jun 29-71	Filed stipulation and order extending defendants Easton Publishing Co. and Call-Chronicle Newspapers, Inc. to answer or move withrespect to complaint, to 9/15/71. So ordered. Cannella, J.

continued next page

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70 CIVIL 5421 NATIONAL AUTO BROKERS CORP.,etal vs. GENERALMOTORS CORP.,etal

D. C. 110 Rev. Civil Docket Continuation

GRIESA, J.

DATE	PROCEEDINGS	Date Judge
May 14-71	Filed Interrogatories by pltfs. addressed to Westbrook Trust Co.	
May 14-71	Filed Interrogatories by Pltrs. addressed to General Motors Corp.,Ford Motor Co. and General Motors Acceptance Corp.	
May 14-71	Filed Affidavit in opposition to motion to dismiss.	
May 14-71	Filed Memorandum in opposition to motion to dismiss by Westbrook Trust Co.	
May 14-71	Filed stipulation and order extending deft. Bulletin Co.'s time to make motions to 7/15/71. So ordered. Tenney, J.	
May 17-71	Filed stipulation adjourning motion now ret.4/18/71 to 5/25/71.	
May 18-71	Filed Interrogatories addressed to pltfs. by Niagara Falls Gazette Set. No. 1	
May 18-71	Filed Interrogatories addressed to pltfs. by Westchester Rockland Newspapers,Inc.Set	
May 18-71	Filed Interrogatories addressed to pltfs. by Hallman's Central Chevrolet Co.Inc.Set.	
May 18-71	Filed Designation of Attorneys, pursuant to Genl. Rule 4 for Hallman's Central Chevrolet Co.,Inc., Niagara Falls Gazette, and Westchester Rockland Newspapers, Inc.	
May 20-71	Filed copy of order filed 5/12/71 with notice of entry.	
May 25-71	Filed Joint Reply Memorandum by Pltfs. inopposition to motions to dismiss by Citizens Bank& Trust Co. of Maryland, etc.	
May 25-71	Filed Affidavit of Carl E. Person in opposition to motions to dismiss.	
May 27-71	Filed MEMORANDUM AND ORDER. The decisionon the motion is postponed pending completion of the discovery efforts plaintiffs are now conducting. In the meantime, of course, the movant's time to answer is correspondingly postponed. Eithe Side may apply, on reasonable notice and appropriate supplementary papers, for further consideration of the motion and decision thereof by the undersigned. So ordered. Frankel, J. (mailed notice).	
May 28-71	Filed stipulation and order extending time of certain defendants to answer complaint. So ordered. McGohey, J.	
Jun 4-71	Filed Designation of Attorneys upon whom service of papers may be made. Philips & Hushkin, 230 Park Ave. NY 10017 for defendant.	
Jun 14-71	Filed First Set of Interrogatories. to Carl E.Person, Atty. for Pltf.National Auto Brokers Corp.	
Jun 14-71	Filed First Set of Interrogs. to Carl E.Person, Atty for Pltfs. Courtesy Auto Brokers,General Auto Sales, etc.	
Jun 16-71	Filed Objections of Ford Motor Co. to Plaintiffs' Interrogs. dated 5/13/71.	
Mar.30-71	Filed Joint Reply Memorandum by Citizens Bank& Trust Co. of Maryland, Wilmington Trust Co., The Suburban Trust Co., and The News-Journal Co.	
Jun 17-71	Filed Interrogatories addressed to News-Journal Co. by Plaintiffs.	
Jun 17-71	Filed Affidavit of The Citizens Bank& Trust Co.	
Jun 17-71	Filed Interrogatories addressed to deft. Dayton Newspapers,Inc. byPltfs.Set No. 1	
Jun 17-71	Filed OPINION #37731, Cooper, J. The motions to dismiss for lack of jurisdiction and improper venue denied with leave to renew following discovery now being undertaken by plaintiffs. So ordered. (mailed notice).	
Jun 18-71	Filed stipulation and order modifying order of Judge Wyatt filed 2/10/71, by changing the dates May 17,1971 and July 15,1971, to July 15,1971 and September 15,1971, respectively, wherever each such date appears in the order. So ordered. Wyatt,J.	
Jun 22-71	Filed Change of Address of Carl E. Person, counsel to Pltfs. to One Fifth Ave. NY 10003	
Jun 23-71	Filed stipulation and order extending pltfs. time to answer or object to interrogs. to 6/30/71. Mclean,J.	
Jun 23-71	Filed stipulation and order extending deft. Bank of Delaware's time to answer complaint to 9/15/71. So ordered. Mclean, J.	
Jun 29-71	Filed stipulation and order extending defendants Easton Publishing Co. and Call-Chronicle Newspapers,Inc. to answer or move withrespect to complaint, to 9/15/71. So ordered. Cannella,J.	

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VS GENERAL MOTORS CORP.

D. C. 110 Rev. Civil Docket Continuation

GRIESA, J.

DATE	PROCEEDINGS
	Served: Glen Campbell Corp. by Carl Person, on 12-30-70
	" Kem Dengler Chevrolet- Oldsmobile, Inc. by [illegible] Dangler, on 12-22-70
	" Hamister-Gillogly Chevrolet, Inc. by Carl Person, on 12-30-7
	" Al Maroone Ford, Inc. by Carl Person, on 12-30-70
	" Rusher Ford Sales, Inc. by Joseph Mottiolli, on 1-4-70
	" Niagara Frontier Automobile Dealers Assoc., Inc. by Hal Casey, on 1-4-71
	" Better Business Bureau of Western N.Y. Inc. By Wm.Marx, on 1=7=71.
	" The Buffalo Courier=Express, Inc. by Richard C. Lyons, on 12-29-70
	" Niagara Falls Gazette by H. B. Nizer, on 12-23-70
Aug.16-71	Filed Summons with Marshal's ret. Served:Chrysler Corp. by Anna Cher on 12-17-70
	Served: Ford Motor Co. by D. Emery, on 12-17-70
	" James P. Roche, C/O General Motor Corp. Unable to serve on 12-17-70
	" Frederick G. Donner, by Unable to serve on 1-14-71
	" The New York Times Co., Inc. by C.R. Hubsart, on 12-29-70
	" New York News, Inc. by Wm. J. Sostantini, on 12-22-70
	" Dow Jones & Co.,Inc. by J.J. McCarthy, on 1-6-70
	" National Better Business Bureau, Inc. by Norman E. Gottlieb. on 12-22-70
	" The Better Business Bureau of Metropolitan New Yorl. Inc. by Arthur Stantz, on 1-4-71.
	" First National City Bank, by Vincent Waldanski, on 12-2[illegible]-70
Aug.16-71	Served Summons with Marshal's ret. Served.Suburban Trust Co. by Mr. H. Kenneth Williams, on 1-19-71
	Served. Citizens Bank & Trust Co. of Maryland by John A. Miller, on 1-19-71.
	" Landmark Communication, Incaby Frank Batten, on 12-24-70
	" The Plain Deaaer , by F. William Dugan, on 1-4-71
	" Dayton Newspapers, Inc. by Robert J. Duckro, on 12-29-70
	" Westbrock Trust Co., by Mr. Jordan, on 12-22-70
	" American Motors Corp. by Mary Moroz, by 12-23-70
	" Call Chronicle Newspapers, Inc.by Marganet Sedlosk, on 12-28-7
	" Easton Publishing Co., by R. Stanley Unangst. on 12-28-70
	" Bulletin Co., by R. D. McGee, on 1-8-71
Aug.16-71	Filed Summons with Marshal's ret. Served:Lewis A. Kaplan, ~~by per-sonally~~ as agent on 6-30-71 of F.G.Donner & J.M.Roche;on 6-29-71,Ford
Aug.16-71	Filed Summons with Marshal's ret. Served: Robin Ford Sales, Inc. by Virginia Colvell, on 12-28-70
	served
	Served Newsday Inc.by Eileen Peterson, on 12-30-70
	" Bano Buick, Inc. by John Meldrum on 1-6-71
	" Marty Motors Corp. by Mr. Marty on 1-6-71
	" Semmes Ford, Inc. by Unable to Serve. on 12-23-70
	" Curry Chevrolet, Inc. by Robert L. Becker, on 12-23-70
	" County Trust Co. by Walter J. Dodernoff, on 12-23-70
	" Better Business Bureau of Westchester County, by W. R. Bruner on [illegible]-6-71
	" The Westchester Rockland Newspapers, Inc. by Brian Donnely on 12-23-70
	" Mark Buick Corp. by Mark Herman, on 12-23-70
	" Ruckle Pontiac Co., Inc. by Charles Adler, on 12-23-70

70 Civil 5421 NATIONAL AUTO BROKERS CORP. VS GENERAL MOTORS CO

DATE	PROCEEDINGS
	Served Yonkers Ford, Inc. by Unable to Serve on 12-23-70
	" Hallman Central Chevrolet Co., Inc. by Bernardine J. Efing, on 12-30-70
	" The News Journal Co., by Richard P. Spager on 12-18-70
	" Wilmington Trist Co. by William W. Gedde, on 12-18-70
	" Bank of Delaware, by James H. Dawson, on 12-18-70
	" The Evening Star Newspaper Co., by Mrs. Dorothy Mason, on 12-30-70
Aug.19-71	Filed stipulation between the attys. for plaintiffs and for Ford Motor Co.
Aug 23-71	Filed stip and order that interrogs. 1 through 29 served by pltffs on deft Bank of Delaware on 7-21-71 are withdrawn without prejudice. Motley J.
Aug 23-71	Filed stip and order that time of every deft to Answer the complaint is extended to 10-31-71, etc. Motley J.
Aug 20-71	Filed Answers to interrogs. addressed to pltffs by defts Hallman's Central Chevrolet Co. Inc. etc.
Aug 25-71	Filed objections of deft First National City Bank to pltffs' interrogs.
Aug 25-71	Filed objections of Citizen Bank & Trust Co. of Maryland, Suburban Trust Co. & Wilmington Trust Co. to pltff's interrogs.
Aug.31-71	Filed Answers and Objections of deft. Westbrook Trust Co. to Pltfs'.Interrogs dated 5/13/71.
Sept.1-71	Filed Answers to Interrogatories addressed to deft. News-Journal Co.
Sept 10 71	Filed Stip & Order of substitution of counsel. Messrs. Cahill, Gordon, etc. substituted in place of Lord, Day & Lord as attys for Deft The Evening Star Newspaper Co. So Ordered- McGohey J.
SEPT 13 71	Filed Interrogs addressed to deft Bulletin Co. by pltffs --- Set #1.
SEPT 13 71	Filed Stip & Order of substitution of counsel. Cahill, Gordon, etc. now attys for The N.Y. Times Co. in place of Lord, Day & Lord. SO ORDERED- McLean J.
Sep 14-71	Filed deft Dayton Newspapers Inc. answers to interrogatories of pltfs'
SEPT 15 71	Filed Answers & objections of deft Westbrook Trust Co. to interrogs by pltff addressed to deft Westbrook Trust Co.
SEPT 16 71	Filed Stip & Order that time of pltffs to answer etc. re: interrogs is ext. from Sept 13 1971 to Oct. 13 1971. So Ordered- McLean J.
Sept 13-71	Filed deft. THE NEWS-JOURNAL COMPANY affdvt & notice of motion to dismiss complaint ret. 9-28-71 and memorandum of law in support of motion
Sep 17-71	Filed pltffs' affdvt & notice of motion to compel answers to pltffs'interrogs. ret. 9-30-71
Sep 17-71	Filed pltffs' memorandum in support of its motion to compel answers to interrogs.
Sept 20-71	Filed affdvt & notice of motion of deft Citizens Bank & Trust Company of Maryland to dismiss complaint ret 9-28-71 & memorandum of law in support of motion
Sept 20-71	Filed affdvt & notice of motion for deft Wilmington Trust Company for Summary judgment ret 10-19-71 & memorandum of law in support of motion
Sept 20-71	Filed affdvt & notice of motion for [illegible] Suburban Trust Co, to dismiss complaint ret. 9-28-71
Sept 20-71	Filed affdvt & notice of motion for deft. The News-Journal Company for Summary Judgment ret 9-28-71 & memorandum of law in support of motion
Sept 27 71	Filed Pltffs' affdvt in opposition to deft News-Journal Company's motion for summary judgment and motion to dismiss.
SEPT 27 71	Filed Memorandum in opposition to the News-Journal Company's motion for summary judgment.
SEPT 27 71	Filed Affdvt by pltffs in opposition to companion motions to dismiss by News-Journal Co, Citizens Bank & Trust Co. of Maryland and Suburban Trust Co.
SEPT 27 71	Filed Memorandum in opposition to companion motions submitted on behalf of the pltffs.

SEE PAGE #9

D. C. 110 Rev. Civil Docket Continuation

GRIESA, J.

DATE	PROCEEDINGS
SEPT 27 71	Filed Pltffs' notice of motion ret. 9/30/71, to compel answers to pltffs' interrogs addressed to deft The N.Y. Times Co. Inc.
SEPT 27 71	Filed Pltffs' memorandum of law in support of motion filed this day.
SEPT 30 71	Filed MEMO ENDORSED on motion papers filed 9-27-71, "Motion withdrawn by stipulation submitted and signed this day. So Ordered. Ryan, J."
SEPT 30 71	Filed Stip & Order that notice of motion to compel answers to pltffs' interrogs to deft The New York Times Co. Inc. ret. 9-30-71 is hereby withdra without prejudice. Ryan, J.
SEPT 28 71	Filed Stip that motion of pltffs to compel defts to answer pltffs interrogs is adj. to Nov. 4 1971.
OCT 4 71	Filed Interrogs by pltffs addressed to deft The Forest City Publishing Co. (Sued as "The Plain Dealer") - Set #1.
OCT 7 71	Filed Additional Summons & Entered Marshal's return --Served G. I. Fischer Ass't Secty & Treasurer of Landmark Comm. Inc. on 7-26-71.
OCT 7 71	Filed Additional Summons & Entered Marshal's return --Served Virginia Garrity of Ford Motor Co. on 7-27-71.
OCT 20 71	Filed OPINION #37956 by Gurfein J. Re: Motion for summary judgment by Deft. Wilmington Trust Co. - Unless further extended by order of this Court the discovery shall promptly proceed to conclusion by Dec. 1 1971. In the meantime, the Court will continue the motion pending such discovery. The Court will accept affdvts from the parties incorporating the discovery matte by Dec. 15 1971 for decision on the motion. So Ordered. m/n
Oct 20-71	Filed memo endorsed on motion filed 9-13-71---3 of the defts' in this multi-par action move to dismiss the complaint--I conclude that none of the claims asse against the moving defts' arise out of any contacts with this District etc. The motions are granted & complaint dismissed as to each of the moving defts I find no just cause for delay in the immediate entry of a judgment of dismi for lack of jurisdiction, & I direct the Clerk of the Court to enter judgmen accordingly-So ordered-Ryan, J. m/n
Oct 20-71	Filed memo endorsed on motion filed 9-20-71-- (See memo endorsed of 10-20-71)
Oct 20-71	Filed memo endorsed on motion filed 9-20-71-- (See memo endorsed of 10-20-71)
Oct 20-71	Filed memo endorsed on motion filed 9-20-71--Motion by deft News Journal Co. f summary judgment with respect to counts 9-13 of complaint has become moot by reason of the decision on the companion motion by this deft to dismiss for l of jurisdiction. Accordingly, this motion is dismissed as moot-So ordered-Ry.
Sep 28-71	Filed in Court reply affdvt of Wm. Hegarty in support of the Venue motions of Citizens Bk. & Trust Co., Suburban Bk. & News-Journel Co.
Sept 28 71	Filed in Court Joint reply memorandum in support of defts' motions to dismiss for improper venue and lack of jurisdiction.
Sept 28 71	Filed in Court Statement pursuant to Rule 9 (g) of the General Rules submitted pltffs.
Sept 28 71	Filed in Court Reply affdvt of the News-Journal Co. in support of its motion fo summary judgment.
Sept 28 71	Filed in Court reply memorandum in support of the News-Journal Co.'s motion for summary judgment & to dismiss.
Oct 20 71	Filed Answers to pltff's interrogs adressed to the N.Y. Times Co.
Oct 18 71	Filed Memorandum in opposition to the Wilmington Trust Co.'s motion for summary judgment, submitted by pltffs.
Oct 19 71	Filed in Court reply memorandum on behalf of Wilmington Trust Co.
Oct 22-71	Filed JUDGMENT -Ordered that defts' The News Journal Co., Citizens Bank & Trust Maryland & Suburban Trust Co. have judgment against pltffs' dismissing the complaint with costs as to them only-Ryan, J. Judgment ent-Clerk m/n Ent 10
Oct 29-71	Filed stip & order that time of pltff to object to interrogs. by defts' is ext. ~~to 10-29-71-So ordered-~~ & the time of pltff Nabcor to answer interrogs. of is ext. to 11-30-71 & time of pltffs' Courtesy Auto Brokers, Gen. Auto Sale & Leasing Inc. etc. to object to interrogs. of defts' is ext. to 10-29-71-So G.

(cont'd on pg 10)

70 CIV 5421 NATIONAL AUTO BROKERS CORP ET AL VS GM CORP.

DATE	PROCEEDINGS	Date Judgm
Nov 1-71	Filed deft Landamrk Communications Inc. answers to interrogatories of pltff	
Oct 29-71	Filed stip & order that time for deft F orest City Publishing Co. to answer complain is hereby extended from 10-31 to 1-31-72-So ordered-Gurfein, J	
NOV 1 71	Filed Stip & Order that time within which defts Easton Publishing Co. and Call-Chronicle Newspapers Inc. may answer or make any motion with respect to the complaint is ext. from Oct 31 1971 to dates indicated. Brieant J.	
NOV 4 71	Filed Stip & Order that time of each deft to answer, etc. re: complaint, is ext. to 1-31-72; No pty shall engage in any discovery until after 1-31-72 except as indicated; The order of Wyatt, J. dtd 2-10-71 is modified as indicated. So Ordered- Brieant J.	
NOV 3 71	Filed The Forest City Publishing Co. answers to interrogs of pltffs.	
NOV 3 71	Filed Stipulation that pltff's motion to compel defts Gen'l Motors Corp., Ford Motor Co. and Gen'l Motors Acceptance Corp. to answer interrogs is adj. from 11-4-71 to 11-11-71.	
NOV 11 71	Filed Pltffs first set of class action interrogs addressed to all defts.	
NOV 11 71	Filed Pltff Nat'l Auto Brokers Corp. objections to all of the interrogs dtd 6-11-71 by defts General Motors Corp and Gen'l Motors Acceptance Corp.	
NOV 11 71	Filed Pltffs Courtesy Auto Brokers, Gen'l Auto Sales & Leasing Inc. Dale Strimple, Robt. B Heim, etc. Louis H Jamele, etc. Afred H Young Sr. etc. Objections to all interrogs dtd 6-11-71.	
NOV 11 71	Filed MEMO ENDORSED on motion papers filed Sept. 17, 1971, "Motion withdrawn by stipulation - So Ordered." Brieant J.	
NOV 15 71	Filed Pltff's notice to take deposition of deft Wilmington Trust Co on Nov. 17, 18, 24, 1971.	
NOV 15 71	Filed Pltffs' notice to take the deposition of witness Nabcor Delaware Auto Brokers Inc. on Nov. 17, 24 1971.	
NOV 12 71	Filed Pltffs' Joint Notice of Appeal $5.00. from the final judgment of Ryan, J. dismissing defts News-Journal Co. Citizens Bank and Trust Co. of Maryland and Suburban Trust Co. entered 10-20-71. Mailed copies.	
NOV 12 71	Received from Nat'l Auto Brokers Corp. check in the sum of $250. in lieu of Cost Bond and deposited the same in the Registry of this Court.	
Nov.17-71	Filed deft's Forest City Publishing Co. affidavit & notice of motion, to dismiss complaint ret. 11-30-71.	
Nov.17-71	Filed deft's memorandum of law in support of his motion ret. 11-30-71.	
NOV 22 71	Filed Deft Ford Motor Co. Answer and objections of Deft to pltff's interrogs.	
NOV 22 71	Filed Deft Gen'l Motors Corp. Answers to pltffs' interrogs.	
NOV 22 71	Filed Deft Gen'l Motors Acceptance Corp. Answers to pltff's interrogs.	
Nov 26-71	Filed stip & order that time for the Newspaper defts' to answer or file objections to pltfs' first set of interrogs. is ext. to 1-8-72-So ordered-Bonsal, J.	
NOV 29 71	Filed Stip & Order that time in which deft Wilmington Trust Co. is required to answer or object to pltffs' class action interrogs (1st set) dtd 11-4-71 is ext. to 2/28/72 or thirty (30) days following the determination of Wilmington Trust Co's motion to summary judgment now pending before Gurfein J. whichever comes first. So Ordered- Ryan J.	
NOV 29 71	Filed Stip & Order that time of Deft Bulletin Co. to answer interrogs and to make returnable any motions pursuant to Rules 12 (b)(2)(3)(4)(5) of FRCP is ext. to Jan. 15 1972 with provisions indicated. Deft reserves right to object to any discovery initiated by pltff upon any ground except that deft agrees not to object to such discovery upon the ground that it is premature for the reason that the motion or motions enumerated above have not yet been made. So Ordered-Ryan J.	
NOV 29 71	Filed Stipulation that the motion of deft The Forest City Publishing Co. (sued herein as the "Plain Dealer") for an order dismissing the complaint as to it is hereby adj. to Jan 11 1972.	K

(cont'd on pg 11)

GRIESA, J.

D. C. 110 Rev. Civil Docket Continuation

page 11

DATE	PROCEEDINGS
Nov 30-71	Filed stip & order that time for deft Bulletin Co. toanswer or object to pltffs' first set of class action interrogs. is ext. from 12-8-71 to 30 days from da on which the first of following events shall occur, if at all: (a) deft seeks discovery of any pltffs' (b) deft withdraws any venue motion made by it (c) e of an order disposing of pltffs' appeal from judgment of dismissal by Ryan,J. on the venue motion by News-Journal Co.. Deft shall not be required toanswer during period from making of a venue motion by it to expiration of a 30 day pe from entry of an order disposing of such motion or any appeal with respect th So ordered-Ryan,J.
Nov 30-71	Filed stip & order that time for deft Forest Publishing Co.to answer or object t pltffs' first set of interrogs. is ext. from 12-8-71 to 30 days from date of the following events shall occur, if it all: (see above entry)-So ordered-Ryan,
Nov 30-71	Filed stip & order that time for defts' Easton Publishing Co. & Call-Chronicle Newspapers Inc. to answer or object to pltffs' first set of class action inter is ext. frm 12-8-71 to 30 days from date on which the following events shall (see above entry)-So ordered-Ryan,J.
DEC 3 71	Filed Stip & Order that time of all defts to whom plaintiffs' 1st set of class action interrogs dtd 11-4-71 is addressed to answer etc. is ext. to 1-8-72 The provisions of this stip shall apply only to those defts whose time to an or object re: pltffs' first set of class action interrogs has not hereto for been extended by separate stipulation. So Ordered- Ryan J.
JUN 14 71	Filed Objections to interrogs addressed to Defts General Motors Corp, General Motors Acceptance Corp. ENT: 12-15-71.
OCT 18 71	Filed Affdvt of Frank Taiorana in opposition to motion for summary judgment by Wilmington Trust Company. ENT: 12-15-71.
OCT 19 71	Filed in court Affdvt of A. Samuel Gray, Vice Pres. of Wilmington Trust Co. in support of motion for summary judgment. ENT: 12-15-71. (supporting affdvts of H.M. Phillips, J.R. Robeson, G.M. Trivits, Andrew G Termes, Geo. McLeigh P.G. Weber, David Greytak.
OCT 19 71	Filed in court affdvt of Sidney S. Rosdeitcher. ENT: 12-15-71.
OCT 19 71	Filed in court affdvt of Carl E. Person, counsel for pltffs in opposition to mo for summary judgment by Wilmington Trust Co. ENT: 12-15-71.
NOV 11 71	Filed in court Stipulation that Defts Gen'l Motors Corp., Ford Motor Co. and Gen'l Motors Acceptance Corp shall answer interrogs on or before Nov. 19 197 Pltffs' interogs to defts, dated 5-13-71 are modified as indicated. Pltffs' motion ret. 11-11-71 to compel defts to answer pltffs' interrogs as modified is hereby withdrawn such withdrawal to be without prejudice to pltffs' right to move to compel answers to said interrogs insofar as they seek information concerning defts other then Westbrook Trust Co. and Dayton Newspapers Inc., upon the making by such other deft of a motion to dismiss the complaint on grounds of improper venue and lack of jurisdiction over the person. So Ordered- Brieant, J.
DEC 15 71	Filed Stip & Order that the time for defts Landmark Comm. Inc. and the Evening Star Newspaper Co. to answer or object to pltff's 1st set of class action interrogs is ext. from 12-8-71 to 30 days from the date on which the first of the indicated events shall occur. So Ordered- Croake, J.
Dec.20-71	Filed stip that said exhibit A is a true & correct copy of the "REPLY MEMORANDUM IN SUPPORT OF MOTIONS TO DISMISS FOR IMPROPER, VENUE & LACK OF JURISDICTION" dated September 27,1971.

SEE PAGE #12

DATE	PROCEEDINGS	Date of Judgment
DEC 17 71	Filed Affdvt of William E. Hogarty in support of Wilmington Trust Co. motion for summary judgment.	
DEC 17·71	Filed ORDER annexed to Affdvt filed this day by WM. HOGARTY, Ordered that summary judgment be & hereby is granted in favor of deft Wilmington Trust Co. and against all pltffs with prejudice except for pltffs' right within the period limited by the applicable statute of limitations to make application, upon notice to Wilmington Trust Co. with leave to Wilmington Trust Co. to be heard upon the application for an order adding Wilmington Trust Co. as a party deft to this action upon a showing of newly discovered evidence, sufficient to withstand a motion for summary judgment pursuant to R. 56 of the FRCP., that Wilmington Trust Co. was a party to any of the conspiracies alleged in counts I, II or III of the complaint & further ordered that deft Wilmington Trust Co. have judgment against all pltffs dismissing all counts of the complaint against said deft, without costs. Gurfein, J. Judgment entered- Clerk. m/r ENT: 12-20-71.	
Dec 21-71	Filed stip & order that time for deft Dayton Newspapers Inc. may answer or make any motion with respect to complaint is ext. from 1-31-72 until 30 days from date on which pltffs' appeal from judgment entered herein on order of Ryan,J. dismissing complaint as to certain defts' for lack of venue-So ordered-Croake,J.	
Dec 21-71	Filed stip & order that time for deft Dayton Newspapers Inc.to answer pltffs' first set of interrogs.(class action) is ext. from 12-8-71 to 30 days from date on which the first of the following events shall occur, if it all: (a) deft seeks discovery of any one or more pltffs' (b) deft stipulates it will not make a motion under Rule 12b (c) deft withdraws any venue motion made or to be made by it; nothwithstanding the foregoing, deft shall not be required to answer interrogs. during the period from the making of a venue motion by it to expiration of a 30 day period from the ~~making~~ entry of an order disposing of such motion or any appeal with respect thereto- Deft shall not be required to answer interrogs. if the determination on the class motion have become final asto deft-So ordered-Croake,J.	
Dec 20 71	Filed Notice that the record on appeal has been certified and transmitted to the U.S.C.A. for the 2d Circuit this 20th day of Dec 1971.	
Jan 5-72	Filed stip & order that time within which deft Evening Star Newspaper Co. may answer or make motion with respect to complaint is ext. from 1-31-72 until 30 days from date on which pltffs' appeal from judgment ent. on 10-20-71 shall have been finally determined-So ordered-Pierce,J.	
Jan 5-72	Filed stip & order that pltff Nat. Auto Brokers Corp. withdraws its objections to interrogs. 1,2,6,7,8,9,11,12,14,17,18,19,20,26,27,28 & 29 contained in the first set of interrogs.by defts' & will answer said interrogs. on or before 1-24-72. Pltff Nabcor withdraws its objections to interrogs. 5,15 & 16 contained in first set of interrogs. Interrogs. 21,22,23 & 24, contained in first set of interrogs. are modified by withdrawing parts as indicated. etc. -So ordered-Pierce,J.	
Jan 7-72	Filed stip & order that time within which deft Ruckle Pontianc Co. must answer or object to pltffs' first set of class action interrogs. of 11-4-70, is ext. from 1-8-72 to 2-1-72-So ordered-Pierce,J	
~~Jan~~ 7-72	Filed stip & order that time for deft Associates Discount Corp. of Deleware Inc. to answer or object to pltffs' first set of c lass action interrogs. is ext. from 1-7-72 to 2-7-72-So ordered-Pierce,J	
JAN 7 72	Filed Deft Buffalo Courier-Express Objections to First set of class action interrogs addressed to all defts.	
JAN 7 72	Filed Answers to first set of class action interrogs addressed to all defts by Buffalo Courier-Express Inc.	
JAN 7 72	Filed Answers of Deft Niagrara Falls Gazette Pub. Corp. to 1st set of class action interogs addressed to all defts.	
JAN 7 72	Filed Objections of Defts Niagara Falls Gazette Pub. Corp. and Westchester Rockland Newspapers Inc., to 1st set of class action interrogs.	

SEE NEXT PAGE

70 CIVIL 5421

70 CIV 5421

D. C. 110 Rev. Civil Docket Continuation

GRIESA, J.

DATE	PROCEEDINGS
JAN 7 72	Filed Answers of Deft Westchester Rockland Newspapers Inc. to 1st set of cl action interrogs.
JAN 7 72	Filed Answers of Deft Hallman's Central Chevrolet Co. Inc. to 1st set of cla action interrogs.
JAN 7 72	Filed Objections of Deft Hallman's Central Chev. Co Inc. to 1st set of clas action interrogs.
JAN 7 72	Filed Objections to 1st set of class action interrogs addressed to all defts Defts Hamister-Gillogly Chevrolet Inc. and Niagara Frontier Auto Dealer Assoc Inc.
JAN 10 72	Filed Objections to 1st set of class action interrogs by Deft Kem Dengler Chevrolet-Oldsmobile Inc.
JAN 10 72	Filed Objections of C.I.T. Financial Corp. to 1st set of class action interr
JAN 10 72	Filed Objections to 1st set of class action interrogs by Deft The County Tru Co.
Jan.10-72	Filed stip to adj. deft's motion ret. 1-11-72 to 6-20-72.
JAN 13 72	Filed Objections of Manhattan Ford Lincoln-Mercury Inc., to first set of class action interrogs addressed to all defts propounded by pltffs.
JAN 13 72	Filed Answer of Manhattan Ford, Lincoln-Mercury Inc. (Sucessor in interest to deft Gotham Ford Inc.) to pltffs' first set of class action interrogs add to all defts.
JAN 13 72	Filed Objections of Robin Ford Sales, Inc. to first set of class action interr addressed to all defts propounded by pltffs.
JAN 13 72	Filed Objections to first set of class action interrogs addressed to all def (Objections by Deft Al Maroone Ford Inc.)
JAN 13 72	Filed Answers of Deft Robin Ford Sales Inc. to pltffs' first set of class acti interrogs.
JAN 13 72	Filed Answer of Deft Ford Motor Co. to pltffs' first set of class action inter
JAN 13 72	Filed Objections of Ford Motor Co. to the so-called "first set of class action interrogs addressed to all defts" propounded by pltffs.
JAN 13 72	Filed Answers of Deft Grand Ford Inc. to pltffs' first set of class action inter
JAN 13 72	Filed Objections of Grand Ford Inc. to first set of class action interrogs.
JAN 12 72	Filed Joint objections of the Better Business Bureaus (National, New York and Westchester) for first set of Interrogs.
JAN 17 72	Filed Answers & objections of Deft N.Y. Times Co. to pltffs' 1st set of class action interrogs.
Jan 13-72	Filed deft Glen Campbell Chevrolet Inc. objections to first set of calss actio interrogs.
Jan.20-72	Filed deft. Hallman's Central Chevrolet Co., Inc. Affdvt. and not of motion for summary judgment. Ret. 2-8-72.
Jan.20-72	Filed deft. Hallman's Central Chevrolet Co., Inc. Brief in Suppo of Motion for summary judgment
JAN 14 72	Filed First Nat'l City Bank's objections to first set of class action interro addressed to all defts.
JAN 14 72	Filed Firtt Nat'l City Bank's answers to first set of class action interrogs.
JAN 17 72	Filed Defts' Gen'l Motors Corp & Gen'l Motors Acceptance Corp. Objections to 1st set of class action Interrogs addressed to all defts.
JAN 18 72	Filed Answers of C.I.T. Financial Corp. to interrogs 10,11 and 13 contained in pltff's 1st set of class action interrogs addressed to all defts.
Jan 20-72	Filed deft Chrysler Corp. objections to first set of class action interrogs.
Jan 20-72	Filed deft General Motors Corp. answers to pltffs' first set of class action in
Jan 20-72	Filed deft Gen. Motors Acceptance Corp. answers to pltffs' first set of class action interrogs.
Jan 26-72	Filed Stip & Order that the time within which the deft Ruckle Pontiac Co Inc., must answer or object to pltffs' first set of class action interrogs dtd Nov. 4 70 is ext. from 2-1-72 to March 1 1972. MacMahon J.

DATE	PROCEEDINGS	Date Order or Judgment Noted
JAN 27 72	Filed Stip & Order that time of each and every deft who or which has been or hereafter may be served with the summons & complaint herein, to answer or move with respect to the complaint is hereby ext. to Apr. 17 1972. No pty shall engage in any discovery in this action until after Apr. 17 1972 except as indicated. The Order of Wyatt, J. filed 2-10-71 as amended by his order filed Jun 18 1971 and para 4 of the orders, dtd 8-6-71, and Oct. 22 1971, is modified by changing the dates Jan 1 1972 and Feb 28 1972, to Feb 17 1972 and April 17 1972 respectively, wherever each such date appears in the order as modified. In the event that any pty hereto moves to sever any part of this action, such motion shall not in and of itself stay or suspend discovery by any party. So Ordered- MacMahon J.	
JAN 27 72	Filed Stip & Order that time of pltff National Auto Brokers Corp. to answer the 1st set of Interrogs served by defts Gen'l Motors Corp., Gen'l Motors Acceptance Corp., Fred G Donner and James Roche & dtd 6-11-71 which was previously extended, is hereby ext. to 2-7-72. The time of Pltffs other than Nat'l Auto Brokers Corp., to answer the 1st set of interrogs is hereby ext. to Feb. 14 1972. So Ordered- MacMahon J.	
Jan 25 72	Filed Deft American Motors Corp. Objections to first set of class action interrogs.	
JAN 31 72	Filed Answers of Deft Better Business Bureau of Western N.Y. Inc. to pltff's class-action interrogs.	
JAN 31 72	Filed First set of interrogs addressed to pltffs by The County Trust Co.	
Feb 9 72	Filed MEMO ENDORSED on motion filed Jan 20 1972, "Motion granted - settle order on notice." Bauman, J.	
Feb 14-72	Filed stip & order that time for deft Bulletin Co. to answer the complaint, to answer interrogs. of pltff & to make returnable any motions purs. to Rule 12(b) is ext. from 1-15-72 to 30 days from date on which the first of the following events shall occur, if at all: (a) deft seeks discovery of any one or more pltffs' (b)deft withdraws any venue motion made or to be made by it(c) entry of an order disposing of pltffs' appeal from judgment of dismissal by Judge Ryan on venue motion by News-Journal Co.-So ordered-MacMahon,J.	
Feb 16 72	Filed Stip & Order that the time within which defts Easton Pub. Co. and Call-Chronicle Newspapers Inc. may answer or make any motion with respect to the complaint, including but not limited to a motion pursuant to R. 12 (b)(2), (3), (4) or (5) FRCP., is hereby ext. to March 31 1972. MacMahon J.	
Feb 14-72	Filed answers and objection of Deft. Newsday Inc. to Pltffs interrogs.	
eb. 14-72	Filed deft's Paul Batt Buick objections to first set of class action interrogs.	
Feb 18-72	Filed ORDER that summary judgment is granted in favor of deft Hallman's Central Chevrolet Co. Inc. & that deft Hallman's Central Chevrolet Co. have judgment against all pltffs' dismissing all counts of complaint against said deft-Bauman,J. Judgment ent-2-18-72-Clerk m/n	Ent 2-22-72
Feb 16 72	Filed Answers & objections of Deft N.Y. News Inc. to pltffs' first set of class action interrogs.	
FEB 6 72	Filed True Copy of U.S.C.A. Stipulation that the appeal taken by pltffs filed 11-12-71 from final judgment entered 10-20-71 is hereby dismissed without costs So Ordered- A D. Fusaro.	
EB 23 72	Filed Answers and objections of Gude Winmill & Co. to pltff's interrogs.	
ar 7-72	Filed stip and order that time within which deft Dayton Newspapers Inc. to answer or object to pltffs' interrogs., is extended to 5-1-72 Metzner J.	
AR 8 72	Filed Stip & Order that time within which Deft Dayton Newspapers Inc. may answer or make any motion with respect to complaint is ext. to 5-1-72. So Ordered- [illegible] J.	

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70 CIVIL 5411

NAT'L AUTO BROKERS CORP. et al vs GEN'L MOTORS CORP et a
70 CIV 5421

D. C. 110 Rev. Civil Docket Continuation

PAGE # 15

GRIESA, J.

DATE	PROCEEDINGS
MAR 10 72	Filed Answers to interrogs addressed to Deft Bulletin Co.
MAR 27 72	Filed stip & Order that time for pltffs to move under 12(c) of the Stipulation dtd 12-23-71 is hereby extended from 2-7-72 to Apr. 3 1972. So Ordered- Gagliardi J.
Mar 30 72	Filed Stip & Order that the time within which the deft, Ruckle Pontiac Co Inc. must answer or object to pltffs' first set of class action interrogs dtd Nov. 4-70 is ext. from 3-1-72 to April 15 1972. So Ordered- Gagliardi J.
APR 3 72	Filed Stip & Order that the information contained in appendix "A" to the Answers and objections of NY Times Co. to pltffs' first set of class action interrogs dtd 1-10-72 is confidential, is for the sole use of pltffs' counsel and will not be disclosed by said counsel to any other person, including the pltff herein, without the express written consent of the NY Times Co. or its counsel. In the event pltffs determine that it is necessary to disclose this information, and th Times will not grant the consent required pltffs may move this court for a determination as to whether the information contained in Appendix A is properly discoverable and, if so, to what extent the Court should, in its discretion, lim the disclosure of that information by the issuance of an appropraite protective So Ordered- Gagliardi J.
APR 3 72	Filed Defts Gen'l Motors Corp., Gen'l Motors Acceptance Corp., F G Donner and J M Roche ---Affdvt & notice of motion ret. 4/6/72 to strike answer (Re: Interrogs)
APR 3 72	Filed Memorandum of law in support of motion to strike class action allegations.
Apr 4-72	Filed stip & order that time of deft Bulletin Co. to make returnable any motions is ext. to 4-11-72 with the provisions as indicated & said deft reserves the right to object to any discovery initiated by pltff upon any ground & time of said deft to answer class action interrogs. of pltffs' is extended to a da 30 days after final disposition of said defts venue motion-So ordered-Motley,
APR 5 72	Filed Answers to first set of interrogs addressed to pltff Louis Jamele by Deft General Motors Corp. et al.
APR 6 72	Filed MEMO ENDORSED on motion papers filed Apr 3 1972, "Motion is granted unless within 60 days from the date of this order the pltff has fully complied with the request to answer interrogs. Counsel fees denied. So Ordered- Motley J." m/n
Apr. 5-72	Filed pltff's memorandum in opposition to motion to strike Class Action Allegations
Apr. 5-72	Filed affdvt of Carl E. Person atty for pltffs. in opposition to motion to strike.
Apr. 6-72	Filed reply affdvt of Lewis A. Kaplan to affdvt in opposition to motion to strike.
Apr. 13-72	Filed deft's (Bulletin Co.) affidavit & notice of motion dismiss, Venue ret. 4-25-72.
Apr. 13-72	Filed deft's (Bullentin Co.) memorandum in support of his motion ret. 4-25-72.
Apr 14-72	Filed stip & order of dismissal without costs as to deft Landmark Communications Inc. -Clerk
Apr 17-72	Filed stip & order that time for deft Ruckle Pontiac Co. Inc. must answer or objec to pltffs' first set of class action interrogs. is extended from 4-15-72 to 6-1-72-So ordered-Motley, J.
Apr 17-72	Filed stip & order that time for deft Ruckle Pontiac Co. Inc. to answer complaint is ext. to 7-17-72-So ordered-Motley, J
Apr 13-72	Filed amended answer of deft Bulletin Co. to Interrogatory 26
Apr. 27-72	Filed affidavit of C.E. Person consenting to dismissal of complaint
Apr. 27-72	Filed memo-endorsed on deft's (Bulletin Co.) motion filed 4-13-72, dismiss complaint: Motion granted on consent. So ordered. McLean, J. mailed notice.
Apr. 27-72	Filed stip to adj. deft's motion ret. 5-2-72.
May 10-72	Filed consent to entry of order, order [illegible]

DATE	PROCEEDINGS	Date Ord Judgment
Apr 27 72	Filed Stip & Order that except as provided in para. 2 of the stip. filed 3/29/71, the time of each and every deft to answer or move with respect to the complaint is hereby ext. to Jul. 17 1972. No pty shall engage in any discovery until after 7-17-72 except as indicated. The order of Wyatt, J. filed 2-10-71 is modified as indicated. So Ordered- McLean J.	
Apr 28-72	Filed stip & order of discontinuance without prejudice & without costs as to defts' Call-Chronicle Newspapers, Inc. & Easton Publishing Co. only-So ordered-McLean, J	
ay 2-72	Filed stip & order that time for deft Dayton Newspapers Inc may answer or make any motion with respect to complaint is ext. form 5-1-72 to 8-1-72-So ordered-Lasker, J	
ay 2-72	Filed stip & order tht time for deft Dayton Newspapers Inc. to answer or object to pltffs' first set of class action interrogs. is ext. from 5-1-72 to 8-1-72; if Dayton Newspapers renews its venue motion, then Dayton Newspapers shall not be required to answer or object to interrogs. until 45 days from date on which an order is entered disposing of such motion-So ordered-Lasker, J.	
MAY 2 72	Filed in court-Consent & Order pur. to R. 12 (b)(2),(3),(4) and (5) FRCP granting the motion of The Forest City Publishing Co., sued herein as "The Plain Dealer", dismissing the complaint as to it for lack of jurisdiction, improper venue and improper service of process without costs to either pty. So Ordered- Lasker, J.	
MAY 2 72	Filed in court -ORDER that deft The Forest City Publishing Co. have judgment against all pltffs dismissing all counts of the Complaint, without costs & without prejudice to the filing of another complaint as against deft The Forest City Publishing Co. alleging the same facts, either by the same pltffs or by other persons, in courts where venue may be properly laid. Lasker J. r/n	
MAY 3 72	Filed Memo Endorsed on motion papers filed 11-17-71, "Motion consented to - Consent by pltff submitted and, order by deft submitted and signed this date. So Ordered. Lasker J."	
AY 2 72	Filed Defts Call Chronicle Newspapers Inc. and Easton Pub. Co. Notice of entry of order filed 4-28-72.	
MAY [illegible] 72	Filed Stip & Order of discontinuance as to Dayton Newspapers, Inc. without costs, & without prejudice to the filing of another summons and complaint setting forth the same claims by pltffs or by any person on whose behalf this action was commenced, in any appropriate judicial district. So Ordered-Lasker, J.	
ay 16-72	Filed stip & order that time for deft Ruckle Pontiac Co. Inc. to answer or object to pltff's first set of class action interrogatories is ext. from 6-1-72 to 7-17-72- So ordered-Frankel, J	
ay 18-72	Filed ORDER & JUDGMENT--Ordered that motion of Westbrook Trust Co. to dismiss the complaint is granted & complaint as against Westbrook Trust is dismissed without prejudice & it is ordered that Clerk of Court is directed to enter a seperate judgment dismissing action as against deft Westbrook Trust Co.- Frankel, J. Judgment ent-Clerk m/n Ent 5-19-72	
ay 18 72	Filed Affdvt of Carl E Person, atty for pltff consenting to dismissal of complaint as to Westbrook Trust Co.	
ay 22-72	Filed Notice of change of address of counsel for deft. to read: Jay A. Herbst, Esq. Cross, Wrock, Miller & Vieson, (for American Motors Corp.) 4200 Penobscot Bldg., Detroit, Michigan 48226.	
ay 31-72	Filed defts' General Motors Corp. et al affdvt & notice of motion directing pltff to answer interrogs. & for pltffs Courtesy Auto Brokers to answer interrogs. ret. 6-8-72	Nat. In
un 5-72	Filed deft's memorandum of law in support of motion to compel answers to interrogs ret. 6-22-72.	
JUN 7 72	Filed Stipulation that motion presently ret. 6-8-72 is adj. to Jun 22 1972 & pltff shall serve any affdvts and memoranda in opposition to said motion so that the same are received by counsel for the defts at or before 1 pm on Jun 14, 1972.	

D. C. 110 Rev. Civil Docket Continuation

GRIESA, J.

DATE	PROCEEDINGS
Jun 21-72	Filed Answers to First Set of Interrogs. addressed to pltf General Auto Sales & Leasing, Inc. bydefts. General Motors Corp., et al
Jun 21-72	Filed Answer of Pltf. National Auto Brokers Corp. to First Set of Interrogs. of defts. General Motors Corp., General Motors Acceptance Corp., Frederic G. Donner and James M. Roche.
Jun 21-72	Filed Answer of Pltf. National Auto Brokers Corp. to First Set of Interrogs. of defts. GeneralMotors Corp., General Motors Acceptance Corp., Frederic G. Donner and James M. Roche.
Jun 21-72	Filed Answers to First Set of Interrogs. addressed to pltf. Dale Strimple by defendants General Motors Corp., et al
Jun 21-72	Filed Answers to First Set of Interrogs. addressed to Pltf. Alfred J. Young, Sr by defts. General Motors Corp., et al
Jun 21-72	Filed Answers to First Set of Interrogs. addressed to Pltf. Nabcor of East New York, Inc. by defts. General Motors Corp., et al
Jun 21-72	Filed Answers to First Set of Interrogs. addressed to pltf. Robert B. Haim d/b/a Robert Haim Auto Sales, by defts. General Motors Corp., et al
Jun 21-72	Filed Answers to First Set of Interrogs. addressed to Pltf. Courtosy Auto Brokers by defts. General Motors Corp., et al
Jun 21-72	Filed Answer of Pltf. National Auto Brokers Corp. to First Set of Interrogs. of defendants General Motors Corp., General Motors Acceptance Corp., Frederic G.Donner and James M. Roche.
~~May 31-72~~	~~Filed Dfts. Gen. Motors [illegible] Motors Accep[illegible] Corp. [illegible] G. Donner [illegible] Notice of Motion. Re: answer interrogs. Ret. 6/22/72. Entered 7/12/72.~~
July 11.72	Filed Memo. End. on dfts. motion paper dated 5/31/72. Ordered As to interrog. 4 addressed to Nabcor, & 6 addressed to franchisee the motion is denied at this time without prejudice to renewal on pltffs. motion for a class determination purausnt to Civ.rule 11-A before the Judge to whom the case will be assigned. (2) Pltff. shal promptly answer the interrogs. 5,15,&16 addressed to Nabcor, & 7,12 & 13 addressed to franchisees, & the request that the answers be simultaneous with the substantially same interrogs. propounded by pltffs. is denied. Gurfein J.
Jun 21.72	Filed Affidavit in opposition to motion to compel answers to certain interrogs. by Thomas H. McManus.
Jul 10.72	Filed Reply Affidavit by Lewis A. Kaplan. in opposition to the motion of certain dfts. x to compel answers to certain interrogs.
Jun 21.72	Filed Memorandum of Law in opposition to motion to compel answers to interrogs.
Jul 12.72	Filed Reply Memorandum in support of motion to compel answers to interrogs.
Jul 17-72	Filed stipulation and order discontinuing action as to deft. Evening Star. So ordered. Brieant, J.
Jul 18-72	Filed stipulation and order extending time of each and every deft. to answer complaint to 10/17/72.etc. So ordered. Brieant, J.
Aug.2-72	Filed transcript of Record of Proceedings of April 6, 1972.
Aug.7-72	Filed consent and order substituting Alfred L. Shiels as attorney for deft. Commercial Credit Corp. in place and stead of Dills and Schelker. So ordered. Frankel, J. (mailed notice).
Aug 14.72	Filed Supplemental Answer of pltff. Nat'l Auto Brokers Corp., to First Set of Interrogs. of dfts. Gen. Motore Corp., Gen. Motors Acceptance Corp., Frederic G. Donner & James Roche.
~~Aug 1[illegible]-72~~	~~Filed aff. Commercial Credit Corp. notice of filing consent to change attny. from Carl Ettersen to Alfred L. Shiels.~~

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DATE	PROCEEDINGS	Date Order Judgment No
Aug16-72	Filed deft Commercial Credit Corp notice of entry of consent to file consent to change of atty.	
Aug 21.72	Filed Stip & Order that the time for dft. Ruckle Pontiac Co., Inc. to answer to pltffs. first set of class action interrogs. is extended to 10/17/72. So Ordered Bauman J.	A.L.S.
Aug 21.72	Filed Stip & Order that the time for dft. Ruckle Pontiac Co., Inc/ to answer to complaint is extended to 10/17/72. So Ordered Bauman J.	
Aug 29.72	Filed Brief in support of motion for summary judgemn by dft. ASSOC Associates Discount Corp., of Delaware, Inc.	
Aug 29.72	Filed Notice of Motion of Dft. Associates Discount Corp. of Delaware Inc., Re: Summary Judgment Ret. 9/12/72.	
Aug 29.72	Filed Supporting Affidavit of Robert G. Twist.	
Aug 29.72	Filed Supporting Affidavit of Norine A. Dahl.	
Aug 29.72	Filed Supporting Affidavit of R.G. Langhan.	
Sep 14.72	Filed Memo End. on Pltffs. Affidavit in response to motion of Assoc. Disconnt Corp., of Delaware Inc., for summary judgment dated 9/11/72. Motion Granted SUBMIT ORDER ON 10 DAYS NOTICE. So Ordered Gagliardi J	
ep 14.72	Filed Dfts. Notice of Deposition upon Richard Mesirov & Gerald Gerson.	
Sep.29.72	Filed Order attached to Notice of Settlement. Ordered summary judgment is granted in favor of dft. Associates Discount Corp. of Delaware, Inc. & against all pltffs. with prejudice except as indicated, etc. Ordered dft. Associates Discount Corp. of Delaware Inc. have judgment against all pltffs. dismissing all counts of the complaint against ALLXXXXXX said dft. without costs. Gagliardi J. Judgeent Entered Clerk. Entered 10/2/72/	[illegible]
ep 11.72	Filed Affidavit in response to motion of Assoc. Discount Corp. of Delaware Inc. for summary judgment.	
Oct 12.72	Filed Notice of Motion by Dft. County Trust Co., Re: Dismiss Complaint. ret. 10/17/72.	
Oct 12.72	Filed Memo: End. on motion by dft. County Trust Co. dated 10/12/72 Motion withdrawn as per letter of Steward W. Rowe dated 10/11/72. Griesa J. (letter attached to motion paper).	
Oct 13.72	Filed Stip & Order that the time of each & every dft. to answer to complaint is extended to 1/17/72, etc. So Ordered Griesa J.	
ct 19.72	Filed Pretrial Order NO. 1. Unsigned. Direct.	
t 25.72	Filed Oral deposition of Richard B. Mesirov dated 9/29/72. (mailed notice)	
ct 19.72	Filed Counter Order and Pretrial Order No. 1 Griesa J.	
Oct 24.72	Filed Statement of Deficiencies in pltffs. Answers to dfts. First Set of Interrogs, pursuant to Pretrial order No. 1.	
t 26.72	Filed Stip & Order thatthe time for dft. Ruckle Pontiac Co., Inc. to answer to pltffs. first set of class action interrogs. extended to 1/17/72. So Ordered Griesa J.	
t 26.72	Filed Stip & Ordere that the time for dft. Ruckle Pontiac Co., Inc. to answer to complaint is extended to 1/17/72. So Ordered Griesa J.	
ct.30-72	Filed stipulation and order extending time to answer complaint to 1/17/73, etc. So ordered. Griesa, J.	
v.1-72	Filed Notice of filing deposition of Richard B. Mesirov.	
v.17-72	Filed Third Supplemental Answer of Pltf. Ruland Auto Brokers Corp. for First Set of Interrogs. of defts. General Motors Corp., General Motors Acceptance Corp., Frederic G. Donner and James M. Roche.	

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70 Civil 5[illegible] NATIONAL AUTO BROKERS CORP., ETAL VS. GENERAL MOTORS CORP., et al

D. C. 110 Rev. Civil Docket Continuation

GRIESA, J.

DATE	PROCEEDINGS
Nov.17-72	Filed Additional Further Answers to First Set of Interrogs. addressed to Pltf. Courtesy Auto Brokers by defts. General Motors Corp., et al.
Nov.17-72	Filed Second Supplemental Answer of Pltf. Natl. Auto Brokers Corp. to First Set of Interrogs. of defts. General Motors Corp., General Motors Acceptance Corp. Frederic G. Donner and James M. Roche.
Nov 24-72	Filed deft's notice of motion Re: summary judgment.
Dec.1-72	Filed Notice of Motion of deft. Commercial Credit Corp. re: summary judgment.
Dec.1-72	Filed Memorandum in support of motion.
Dec.4-72	Filed Second Set of Interrogatories with Request to Produce Documents.
Dec.4-72	Filed Notice of Deposition of persons listed on Schedule A annexed.
Dec.21-72	Filed Stip & Order that pltffs to object or to serve answer to interrogatories & produce documents for inspection & copying not latter than 1-3-73. (For further details see stip in file room 507). GRIESA, J.
Jan.2-73	Filed Order of Dismissal as to deft COUNTY TRUST COMPANY. So Orde 12-22-72 GRIESA, J.
Jan.12-73	Filed Deft N.Y. Times Company affdvt & notice of motion pursuant to Rule 21 F.R.C.P. to severing counts 9 through 13 of this actio Ret: 1-19-73.
Jan.12-73	Filed Deft N.Y. Times Company memorandum of law in support.
Jan.16-73	Filed Pltffs answer to 2nd set of interrogatories by the deft General Motors Corp.
Jan.16-73	Filed Pltffs objections to 2nd set of interrogatories.
Jan.16-73	Filed Notice of Settlement and ORDER. Ordered that summary judgment is grante in favor of deft. Commercial Credit Corp. and against all pltfs. herein, with prejudice except for pltf's. right within the period limited by the applicable statute of limitations to make application, upon notice to Commercial Credit Corp. with leave to be heard, for an order adding Commercial as a party deft, etc; ordered that deft. Commercial Credit Corp. have judgment against all pltfs. dismissing all counts of the complaint against said deft., without costs. Griesa, J. (mailed notice). Judgment ent. 1/17/73. Ent. 1/17/73.
Jan.17-73	Filed Affidavit of Sidney S. Rosdeitcher in support of motion of New York Times to sever certain counts.
Jan.17-73	Filed stipulation and order extending deft. Ruckle Pontiac Co.Inc.'s time to answer or object to pltfs'. first set of interrogatories to 4/17/73. So ordered Griesa, J.
Jan.19-73	Filed Affidavit of D. Robert Owen.
Jan.22-73	Filed stipulation and order extending each defendant's time to answer complaint to 4/17/73 etc. So ordered. Griesa, J.
Jan.31-73	Filed stipulation and order extending deft. Ruckle Pontiac Co.Inc.'s time to answer complaint to 4/17/73. So ordered. Griesa, J.
Jan.31-73	Filed stipulation and order with respect to the Second Set of Interrogatories with Request to Produce Documents. So ordered. Griesa, J.
Feb.6-73	Filed Memorandum of The Ford Defendants with respect to summary judgment motion of deft. Paul Batt Buick, Inc.
Feb.8-73	Filed Notice of Motion Ret. time to be fixed by the Court RE: summary judgment in favor of deft. Paul Batt Buick, Inc.
Feb.8-73	Filed MEMO.END. on motion papers filed this day. The motion by deft. Paul Batt Inc. for summary judgment is denied. So ordered. Griesa, J.
Feb.22-73	Filed Request to Produce Documents with Interrogatory.
Feb.26-73	Filed Notice of Settlement and PRETRIAL ORDER NO. 2. On or before 3/1/73 plaintiffs shall serve and file answers to defendants' Second Set of Interrogatories with Request to Produce Documents, and shall produce for inspection and copying as indicated. It is so ordered. Griesa, J. (mailed notice).

Cont'd on page 20

DATE	PROCEEDINGS	Date Order Judgment N
Mar.5,73	Filed Memo, # 39269 by GRIESA J. Deft's. New York Times has moved to sever Counts 9-13 of the complaint in this action. The motion is granted So Ordered. GRIESA, J. (Mailed Notice)	
Mar.5,73	Filed notice of settlement and ORDER, Deft' C.I.T. Financial Corp. have Judgment against all plaintiffs dismissing all counts of the Comp. against said deft. with prejudice and without costs. Judgment Entered by Clerk. (notice mail	
Mar.9,73	Filed notice of deposition with request to produce documents of National Auto Brokers Corp. Frank Maiorana and Michael O'Brien.	
Mar.13,73	Filed further answers to second set of interrogatories addressed to Pltf,	
Mar.14,73	Filed notice of motion, ret. Mar.29,73 at 10:00a.m. Re; Summary Judgment, deft. Niagara Falls Gazette Publishing Corp.	
Mar.16,73	Filed transcript of proceedings dated Feb.14,73.	
ar.19,73	Filed notice of motion,ret. Mar.30,73,Re: consolidating this action with 72 Civ.5438 and 72 Civ.3515.	
Mar.19,73	Filed memo in support of motion to consolidate.	
Mar.22-73	Filed stipulation and order extending deft. New York Times Co.'s time to answer complaint to 4/17/73 or 10 days frollowing the granting or denial of the New York Times Co.'s motion to consolidate,etc. So ordered. Griesa, J.	
Mar.19-73	Before Griesa, J. Hearing begun - Motion for Pre. Inj. by Pltf.	
Mar 26-73	Filed deft's notice to take deposition of the persons listed in Schedule A. At time indicated.	
Apr5-73	Files Stip and Order that the time for deft N.Y. News,Inc.Newsday,Inc. and Westchester Rockland Newspapers,Inc. to answer counts 9-13 of the complaint is ajd'd to 4-17-73 etc. GRIESA,J.	
Arp6-73	Filed Stip and Order Dismissing counts 9 thru 13 as to Buffalo Courier-Express Inc. GRIESA,J.	
Mar19-73	Hearing Begun before Judge Griesa.	
Ap[illegible]0-73	Hearing cont'd and concluded. Preliminary injunction-denied. GRIESA,J.	
Ap[illegible]2-73	Filed deft. NewYork News Inc & Newsday Inc's affidavit in opposition to class motion. by Andrew L. Hughes.	
Apr 12-73	Filed deft N.Y. Times co, affidavit byRobert R. Knapp.	
pr 12-73	Filed deft. N.Y. Times Co. affidavit by Arnold E. Beerman.	
Apr 13-73	Filed deft. Nigara Falls Gazette's supplemental affidavit in support of its motion for summary judgment.	
Apr 1373	Filed deft. Westchester Rockland Newspaper, Inc.'s affidavit by Douglas H. Mc Corkindale in opposition to class-action motion.	
Apr 13-73	Filed deft. Dow Jones & Co, Inc's affidavit in oppositipn tp pltff's motion for class action determination.	
Apr 13-73	Filed Order that Summary Judgment is granted in favor of deft. Nigara Falls Gazette Publishing Corp. with respect to counts 9-13 of the complaint. Also Ordered that Niagara Falls Gazette Publishing Corp. have judgment against all Pltff's dismissing counts 9-13 of the complaint against said deft. with prejudice and without costs, So Ordered Griesa J. m/n	
pr 13-73	Filed stip and order that the deft. Dow Jones & Co's time to answer the complain is extended to 20 days after the decision on motion to consolidate filed in this court in 70 civ 5421, (counts 9-13) 72civ5438; 72civ3515 by the attys for the deft. N.Y. Times Co. So Ordered Griesa J.	
pr 12-73	Filed deft N.Y. News Inc's ANSWER to the complaint.	TUCER
pr 12-73	Filed deft Newsday, Inc's ANSWER to the complaint.	TUCER
Apr 16-73	Filed stip and order that the time for the deft. to answer the complaint is extended to 5/1/73. So Ordered Griesa J.	

Cont'd page 21

JUDGE GRIESA

JUDGEGRIESA 70civil 5421

DATE	PROCEEDINGS	Date Or. Judgment
pr 17-73	Filed deft's Bank of Delaware's Notice of Motion, Re: summary judgment, ret before Griesa J. on 5/1/73	
Apr 17-73	Filed memo of Dow Jones & Co, in opposition to pltff's motion for Class Determination	
Apr 19-73	Filed deft Niagara Falls Gazette Publishing Corp's ANSWER to the complaint	[illegible]
Apr 19-73	Filed deft Westchester Rockland newspapers Inc's ANSWER to the complaint.	[illegible]
Apr 19-73	Filed deft Westchester Rockland Newspapers Inc's ANSWER to the complaint(counts 9-13)	[illegible]
Apr 19-73	Filed deft General Motors designation of deposition excerpts as part of the record on pltff's motion for P.I.	
Apr 20-73	Filed deft Better Business Bureau of Western N.Y. ANSWER to the complaint.	[illegible]
Apr 20-73	Filed deft Ruckle Pontiac Co's objections to pltff's first set of class action Interrogatories. addressed to all defts.	
Apr26-73	Filed defts The Better Business Bureau of Metropolitan NewYork,I The Better Business Bureau of Westchester County and The National Better Business Bureau,Inc.'s notice fo production to pltffs ret: 5-23-73.	
Apr30-73	Filed ANSWER ofdeft Paragon Oldsmobile,Inc. to the complaiht.	S.A.W
May1-73	Filed ANSWER of deft The Buffalo Courier-Express,Inc. to the complaint.	
May1-73	Filed ANSWER of deft Al Moroone Ford,Inc. to thh complaint.	B,V,G
May3-73	Filed Stip and Order that the time for defts to answer is extended from 5-1-73 to 6-1-73. GRIESA,J.	B,M&M
May3-73	Filed Stip and Order that the only counts of the complaint with respect to which pltff seeks relief against Dow Jones and which call for an answer by Dow Jones are Counts 1 through 3 and 9-13, Dow Jones shall answer by 6-1-73. GRIESA,J.	
May3-73	Filed Stip and Order that the time for deft New York Times Co. to answer counts 9 through 13 of the complaint in this action is extended to 10 days following the determination of pltff's motion to maintain and prosecute counts 9 through 13 of this action as a class action or 6=1-73. GRIESA,J.	
May3-73	Filed defts, The Better Business Bureau of Metropolitan N.Y.,Inc, of Westchester County and National's ANSWER to the complain.	
Mar5-73	Filed deft C.I.T. Financial Corp's notice of motion for summary judgment ret: 3-14-73.	BA&
ay9-73	Filed ANSWER of Hamister-Gillogly Chevrolet,Inc. to the complaint.	[illegible]
May9-73	Filed ANSWER of Niagara Frontier Automobile Dealers Assocs to the complaint.	
ay9-73	Filed AMENDED ANSWER of deft Westchester Rockland Newspapers,Inc.	[illegible]
ay9-73	Filed AMENDED ANSWER of deft Niagara Falls Gazette Publishing Corp.	[illegible]
ay9-73	Filed AMENDED ANSWER of deft Westchester Rockland Newspapers,Inc.	[illegible]
May 10-73	Filed deft. Glen Campbell Chevrolet, Inc's ANSWER to the complaint.	[illegible]
May 18-73	Filed deft. New york Times Co's rejoinder & supplemental memo in oppostion to class action status	
ay 18-73	Filed deft. New York Times Co's supplemental affidavit by Robert R. Knapp,	
pr 18-73	Filed Order, that summary judgment be and is hereby granted in favor of deft. Bank of Delaware and against all pltffs with prejudice except for pltfs right as indicated. Further Ordered that deft. Bank of Delaware have judgment against all pltffs dismissing all counts of the complaint against said deft. with prejudice and without costs, So Ordered Griesa J. m/n Ent on docket	on 5/22/
18-73	Filed deft. Bank of Delaware's affidavit of service by William G. Ballaine.	"
18-73	Filed deft. Bank of Delaware's affidavit by Grant B. Hering	"
pr 18-73	Filed deft. Bank of Delaware's affidavit by Howard C. McAdams	"
pr 18-73	Filed deft. Bank of Delaware's statement pursuant to rule 9(g)	"

Cont'd on page 22

70 CIVIL 5421
D. C. 110 Rev. Civil Docket Continuation

Page 21

70 CIVIL 5421

DATE	PROCEEDINGS
Apr 18-73	Filed deft. Bank of Delaware's affidavit by Robert U. Altemus, Jr. ent. 5/22/73
May 22-73	Judgment Entered on Order filed dated 4/18/73, Clerk,
May 2-73	Filed deft. Paul Batt Buick, Inc's ANSWER to the complaint.
May 14-73	Filed deft. Paul Batt Buick's affidavit of service by Ross L. Runfola
May.23-73	Filed notice of change of firm name. The firm of Cahill, Gordon, Sonnett, Reindel &
	Ohl is changed to Cahill Gordon & Reindel.
May 31-73	Filed deft. N.Y. Times Co's affidavit by Arnold E. Beermann.
May 31-73	Filed deft. N.Y. Times Co's affidavit by Robert R. Knapp.
May 31-73	Filed deft. N.Y. Times Co's affidavit by Robert R. Knapp.
May 29-73	Filed stip and order that the time for the deft to answer the complaint is hereby
	extended to 6/25/73, So Ordered Griesa J.
6-1-73	Filed transcript of proceedings dated March 12, 1973.
6-1-73	Filed transcript of proceedings dated Feb. 7, 1973.
6-1-73	Filed transcript of proceedings dated March 19, 1973.
6-1-73	Filed transcript of proceedings dated March 8, 1973.
6-1-73	Filed transcript of proceedings dated March 23, 1973.
Jun 6-73	Filed deft Dow Jones & Co. Inc's supplemental memo
Jun 5-73	Filed stip and order that the time for the defts Dow jones & Co, Inc. to answer
	the complaint is hereby extended to 6/25/73, So Ordered Griesa J.
Jun11-73	Filed defts notice of entry.
Mar 6-73	Filed in court Pltffs memo in support ofmotion for a Preliminary Injunction. Ent
Mar 6-73	Filed in court Pltffs notice of motion, Re; Preliminary Injunction, ret befroe Gri
	ntered on docket 6/19/73
Mar 19-73	Filed in court defts. General Motors Corp & General Motors Acceptance Corp. &
	F. Donner & J.M. Roche's memo in opposition to motion for P, I. Ent on docket
Apr 10-73	Filed in court Pltffs affidavit by William G. Kemp.
Apr 19-73	Filed in court Pltffs affidavit by Lawrence F. Kelleher, Ent on docket 6/19/73
Jun 19-73	Filed Deposition of the pltff. taken by deft. General Motors corp. on 3/14/73
Jun 19-73	Filed deposition of the pltff. taken by deft; General Motors Corp on 3/15/73
Jun 19-73	Filed deposition of the pltff. taken by the deft. General Motors Corp. on 3/16/73
Jun 19-73	Filed deposition of the pltff. taken by the deft. General Motors Corp. on 3/26/73
Jun 19-73	Filed deposition of the pltff. taken by the deft. General Motors Corp. on 3/27/73
Jun 19-73	Filed deposition of the pltff. taken by the deft. General Motors Corp. on 3/28/73
Jun 19-73	Filed deposition of the pltff. taken by the deft. General Motors Corp. on 3/29/73
Jun 19-73	Filed deposition of the pltff. taken by the deft. General Motors Corp. on 3/30/73
Jun 19-73	Filed pltffs deposition taken by the deft. General Motors Corp. on 4/5/73
Jun 19-73	Filed deposition of the pltff. taken by the deft. General Motors Corp. on 4/5/73
Jun 19-73	Filed deft. General Motors designation of deposition excerpts as part of the record
	on pltffs motion for a P.I.
Jun 19-73	Filed pltffs affidavit by Carl E. Person.
Jun 18-73	Filed transcript of the record of proceedings dtd. 3/2/73
Jun 25-73	Filed deft. General Motors Corp's notice of motion, Re: Partial Summary Judgment
	ret before Griesa J.
Jun 25-73	Filed deft. General Motors Corp's memo
Jun 14-73	Filed transcript of the record of proceedings dtd. 4/2/73
Jun 14-73	Filed transcript of the record of proceedings dtd. 4/20/73
Jun 14-73	Filed transcript of the record of proceedings dtd. 4/10/73
Jun 25-73	Filed deposition of Dale [illegible] taken by the deft. on 4/2/73
Jun 25-73	Filed deposition of Ernest A. Turco taken by the deft. on 4/3/73
Jun 25-73	Filed deposition of Robert B. Hein taken by the deft. on 4/9/73.
Jun 25-73	Filed deposition of Alfred J. Young taken by the deft. on 4/11/73
Jun 25-73	Filed deposition of Louis Hercules taken by the deft. on 4/12/73
Jun 25-73	Filed deposition of Peter J. Cucci taken by the deft. on 4/13/73.

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Cont'd Page 23

NATIONAL AUTO BROKERS CORP. et al VS GENERAL MOTORS COR , et al

73 civil

CIVIL DOCKET

JUDGE GRIESA

DATE	FILINGS—PROCEEDINGS
Jun 27-73	Filed deft. BobcBain Chevrolet Inc's ANSWER to the complaint.
Jun 1-73	Filed transcript of the record of proceedings dtd 3/29/73
Jun 29-73	Filed defts affidavit in opposition to pltffs' class action motion.
Jun 29-73	Filed deft. Ruckle Pontiac Co's affidavit in opposition to pltffs motions for action determination.
Jun 29-73	Filed defts. General Motors Corp. & General Motors Acceptance Corp. & Frederic and James M. Roche's affidaivt in opposition by Lewis A. Kaplan.
Jun 29-73	Filed Joint memo of certain defts in opposition to pltffs motiona for class ac determinations.
Jul 3-73	Filed deft. Better Business Bureau of Metropolitan New York, Better Business B of Westchester County, and National better Business Bureau, Inc's affidavit by Leonard A. Mentzer in oppostion to pltff's class action motion.
Jun 22-73	Filed transcript of the record of proceedings dtd. 2/14/73
Jun 26-73	Filed deft. Dow Jones & Co, Inc's answer to counts 1,2,3,
JUN 26-73	Filed deft Dow Jones & Co, Inc's ANSWER to counts 9-.13
Jun 26-73	Filed deft. Ruckle Pontiac & Co, Inc's ANSWER to the complaint.
Jul 9-73	Filed defts affidavit by David K. Floyd in opposition to pltffs motion for a cl action determination.
Jul 9-73	Filed affidavit of service by mail by E. Volgenau
Jul 9-73	Filed affidavit ofl service by maid by E. Volgenau
Jun 27-73	Filed deft. N.Y. Times Co's ANSWERto the complaint.
Jun 29-73	Filed defts. Bano Buick, Inc! ANSWER to the complaint
Jul 2-73	Filed d eft First Nation al City Bank's affidavit in opposition.
Jul 2-73	Filed deft. First National City NBank's ANSWER to the complaint.
Jul 6-73	Filed in court, pltffs' objections to Interrogatories served by the deft.
Jul 6-73	Filed in court, pltffs atty's notice of change of adress. to 132 Nassau Stree
Jul.27,73	Filed ANSWER to complaint by Deft. N.Y. Times. C
Jul.5,73	Filed ANSWER of deft. Bates Pontiac. BY
Jul.12,73	Filed Affdvt. in opposition to pltf. motion for class action determination.
Jul.19-73	Filed notice of motion; Re: summary judgment dismissing Count Eight of comp, etc. Ret. date not noted.
Jul.19-73	Filed memo os law in support of motion by certair defts. for summary judgment.
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cont'd on page 24

70 Civ. 5421 National Auto Brokers Corp., et al -v- General Motors Corp., et al

TE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
6-73	Filed Opinion # 39,745--The motions to declare the Ambook, Nabcor and Times Square actions to be properclass actions are denied. The motion of Tire Inc. to declare the Ambook action not to be a proper class action is granted. The motion of Kings Electronics & Olympia Theatre to intervene in the Ambook action is granted to the extent that they are permitted to join that action and assert individual claims. The motion to file the proposed second amended complaint in Ambook is denied, since that pleading contains improper class allegations. However, this is without prejudice to a motion to file a further pleading devoid of class action allegations. Settle order--Griesa, J.	
ne 4-73	Filed supplemental affdvt. of Irving Bizar	
6-73	Filed affdvt. of Andrew L. Hughes	
6-73	Filed supplemental affdvt. in support of Class action motions	
6-73	Filed reply affdvt. of Andrew L. Hughes	
.6-73	Filed Stip and order extending time for plts. to serve memo in opposition to motion for partial summary judgment dismissing certain counts until Aug.13-73., Etc. GRIESA, J.	
16-73	Filed transcript of record of proceedings dated May 21, 1973	
p.11-73	Filed ORDER: GRIESA, J. Ordered that this action may not be maintained as a class action.	
2-73	Filed reply memorandum of Automobile Manufacturer defts. in support of motion for partial summary juogment--	
2-73	Filed reply affdvt. of Lewis A. Kaplan	
9-73	Filed transcript of record of proceedings of 3-29-73-	
9-73	Filed transcript of record of proceedings of 5-21-73.	
9-73	Filed transcript of record of proceedings of 6-12-73.	
-7-73	Pretrial hearing held	
26-73	Filed memorandum--deft. Niagara Falls Gazette Publ. Corp. has moved for summary judgment dismissing this case as to it. The motion is not opposed and is granted. So ordered--Griesa, J. -- mailed notice	
.21-73	Filed defts General Motors, Donner & Roche supplemental affdvt ~~in opposition to pltffs motion.~~	
.21-73	Filed defts Gen. Motors, Donner & Roche supplemental memo in opposition to pltffs motions for class action determinations.	Y
.21-73	Filed defts Gen. Motors, Donner & Roche special memo in opposition to class action motions.	

cont'd on page 25

70 Civ. 5421 National Auto Brokers Corp., et al -v- General Motors Corp., et al

70 Civ.

Page 24

DATE	FILINGS—PROCEEDINGS
Aug. 6-73	Filed Opinion # 39,745--The motions to declare the Ambook, Nabcor and Times Square actions to be properclass actions are denied. The motion of Time Inc. to declare the Ambook action not to be a proper class action is granted. The motion of Kings Electronics & Olympia Theatre to intervene in the Ambook action is granted to the extent that they are permitted to join that action and assert individual claims. The motion to file the proposed second amended complaint in Ambook is denied, since that pleading contains improper class allegations. However, this is without prejudice to a motion to file a further pleading devoid of class action allegations. Settle order--Griesa, J.
une 4-73	Filed supplemental affdvt. of Irving Bizar
ug. 6-73	Filed affdvt. of Andrew L. Hughes
ug. 6-73	Filed supplemental affdvt. in support of Class action motions
ug. 6-73	Filed reply affdvt. of Andrew L. Hughes
ep.6-73	Filed Stip and order extending time for plts. to serve memo in opposition to motion for partial summary judgment dismissing certain counts until Aug.13-73., Etc. GRIESA, J.
Aug 16-73	Filed transcript of record of proceedings, dated May 21, 1973
ep.11-73	Filed ORDER; GRIESA, J. Ordered that this action may not be maintained as a class action.
v. 2-73	Filed reply memorandum of Automobile Manufacturer defts. in support of motion for partial summary judgment--
. 2-73	Filed reply affdvt. of Lewis A. Kaplan
. 9-73	Filed transcript of record of proceedings of 3-29-73-
. 9-73	Filed transcript of record of proceedings of 5-21-73.
. 9-73	Filed transcript of record of proceedings of 6-12-73.
7-73	Pretrial hearing held
. 26-73	Filed memorandum--deft. Niagara Falls Gazette Publ. Corp. has moved for summary judgment dismissing this case as to it. The motion is not opposed and is granted. So ordered--Griesa, J. -- mailed notice
.21-73	Filed defts General Motors, Donner & Roche supplemental affdvt in opposition to pltffs motion.
.21-73	Filed defts Gen. Motors, Donner & Roche supplemental memo in opposition to pltffs motions for class action determinations.
.21-73	Filed defts Gen. Motors, Donner & Roche special memo in opposition to class action motions.

cont'd on page 25

70 Civ.5421 National Auto Brokers Corp., et al v Gen'l Motors Corp. et al 70 Civ.

CIVIL DOCKET Page 25 Griesa, J.

DATE	FILINGS—PROCEEDINGS
Jan. 3-74	Filed defts' request to produce documents with interrog.
Jan. 14-74	Filed stip. & order that pltfs. shall produce document indicated on or before 1-9-74--pltfs' shall comply with 2nd request to produce documents on or before 1-9-74--Griesa, J.
Feb. 4-74	Filed notice of change of firm address. (deft. Dow Jones & Co.
Mar.26-74	Filed defts (Gen. Motors, Frederic Donner & James Roche), affdvt & notice of motion to dismiss the complt. Ret. 4-[illegible]-74.
Mar.26-74	Filed defts memo of law inssupport of motion to dismiss.
Apr.5-74	Filed pltfs. notice of cross motion for discovery , etc. and affdvt in opposition to deft. motion to dismiss.
Apr.5-74	Filed pltfs. memo of law in opposition, to defts, motion to dismiss and for other relief.
Apr. 5-74	Filed OPINION #40,560--The motions of the auto manufacturer defts. for summary judgment are granted to the following extent: (1) Counts 21,22,23 and 27 are dismissed in their entirety. (2) Counts 1-20 are dismissed, except as to the trans-shipment claim of Nabcor. (3) Counts 14-17, 24-26 are dismissed as to pltfs. Courtesy Auto Brokers, Hein, Carrle and Young. Except as thus granted, the motions for summary judgment are denied. Pltfs' motion to represent the class of Nabcor broker-franchisees is denied. So ordered--Griesa, J.-mailed notice. --Judgment entered-Clerk
Apr. 11-74	Filed stip. & order adjourning defts' motion to dismiss to 4-22-74-defts. shall serve reply papers in support of said motion no later than 4-17-74--Griesa, J.
Apr.12-74	Filed OPINION # 40582; *** The motion of deft. Niagara Falls Gazette Publishing Corp. for summary judgment should be granted. The complaint as to that deft. is dismissed. So Ordered. GRIESA,J. (n/m)
Apr.15-74	Filed memo end on defts. motion filed 3-26-74. Motion denied. So Ordered. GRIESA,J.
Apr.15-74	Filed memo end on pltfs cross motion filed 4-5-74. Motion denied. So Ordered. GRIESA,J.
Apr.22-74	Filed defts. Dow Jones Affdvt. and notice of motion to dismiss complaint. Ret. 5-3-74.
Apr.24-74	Filed deft. 1st. National City Bank first set of interrogatories with request to produce documents.

Cont'd on page 26

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NATIONAL AUTO BROKERS , et al -v- GENERAL MOTORS CORP, et al GRIESA,J.

70 Civ 5421

DATE	FILINGS—PROCEEDINGS
r.26-74	Filed ORDER that summary judgment is granted in favor of Niagara Falls Publishing; Ordered that Niagara Falls Gazette Publishing have judgment against pltfs. dismissing the complaint .GRIESA,J. Judgment entered. Clerk Ent. 4-29-74.
May 7-74	Filed stip. & order of dismissal as to deft. Dow Jones & Co.,Inc. only--Griesa,J. (70 Civ. 5421 A)
May 7-74	Filed stip. & order of dismissal as to deft. Dow Jones & Co., Inc. only--Griesa,J. (70 Civ. 5421 B)
May 15-74	Filed deft. NYT first set of interrogatories. (70 Civ.5421 B)
un.10-74	Filed deft (N.Y. Times Co.) affdvt & notice of motion to dismiss count 12 of the complt. & count 3 of the proposed amended complt. Time & day to be set by Court.
un.10-74	Filed deft's memo of law in support of motion.
ay 31-74	Filed request of Buffalo Courier Express for production of documents by pltff.
Jun.10-74	Filed deft West. Rockland Newspapers second set of interrogs to pltffs' & request to produce documents.
n 7-74	Filed pltffs answers to interrogs by deft First National City Bank.
n.24-74	Filed Stip & Order that time for pltffs to answer or object re interrogs, etc. is extended to 7-1-74.....GRIESA, J.
SEPT 28-73	Filed transcript of record of proceedings, dated JULY 2, 1973.
JAN 28-74	Filed transcript of record of proceedings, dated NOV. 14, 1973.
JAN 28-74	Filed transcript of record of proceedings, dated NOV, 7, 1973
SEPT 28-73	Filed transcript of record of proceedings, dated JUNE 12, 1973.
ul.3-74	Filed Stip & Order extending time for pltffs to answer or object to first set of interrogs to 7-15-74......GRIESA,J.
n 28-74	Filed pltffs request for document production.
ne28-74	Filed answers to interrogs.
n 20-74	Filed first request to produce documents for inspection and copying. (pltffs.)
l 12-74	Filed defts' notice of deposition.
l 10-74	Filed second set of interrogs. addressed to pltffs by Westchester Rockland Newspapers, Inc. and request to produce documents.
l 23-74	Filed Stip..That the time the pltffs may answer or respond to Second Set of Interrogs. is extended to Jul 24-74....Griesa, J.
l 23-74	Filed Stip. that the time deft. Westchester Rockland Newpapers inc. to respnd to Pltffs' First Request to Produce Documents for Inspection Y Coping is extended toAug 12-74...Griesa, J.

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DATE	PROCEEDINGS
JUL 26-74	Filed transcript of record of proceedings, dated APR. 12-74
JUL 26-74	Filed transcript of record of proceedings, dated APR. 29-74
JUL 26-74	Filed transcript of record of proceedings, dated APR. 19-74
JUL 26-74	Filed transcript of record of proceedings, dated FEB 26-74
Jul.24-74	Filed pltffs interrogs addressed to certain defts.
Jul.24-74	Filed pltffs interrogs addressed to deft(Niagra Frontier.)
Jul.24-74	Filed pltffs interrogs addressed to(First Nat'l City Bank.)
Jul.24-74	Filed pltffs interrogs addressed to certain defts.
Jul.24-74	Filed interrogs addressed to deft(Gen. Motors Acceptance Corp.)
Jul.24-74	Filed pltffs interrogs addressed to certain defts.
Jul.24-74	Filed pltffs interrogs addressed to each of the deft franchised dealers & to GM & Ford (relating to retail divisions, subsidiaries & financed dealerships.)
Jul.25-74	Filed pltffs statement identifying officials & employees of defts to be deposed by pltffs.
Jul.25-74	Filed deft (Newsday's) answer to pltffs first request for production & inspection.
Jul.26-74	Filed deft (N.Y. Times's) answers to interrogs.
Jul.26-74	Filed deft (N.Y.Times's) objections to interrogs addressed to pltff.
Aug 1-74	Filed Stip. & Order extending the time deft. N.Y.Times Co has to respond to pltf's request for production of document to 8-26-74...So Ordered..Griesa, J.
Aug 1-74	Filed Stip. & Order extending the time for deft. N.Y. News Inc. ot respond to pltffs' First request to produce documents..to 8-13-74...Griesa, J.
Aug.1-74	Filed pltffs notice to take deposition of deft First National City Bank with request for production of documents.
Aug.1-74	Filed Order permitting pltfis to conduct depositions before trial at which testimony would be recorded by electronic recording equipment. Motion is granted upon the terms & conditions as indicated.....GRIESA,J. m/n
Jul.12-74	Filed defts notice to take deposition. Two subpoenas issued.
Aug.22-74	Filed pltffs notice to take deposition with request for production of documents.
Aug.26-74	Filed pltffs notice to take depositions of witnesses described in Schedule A.
9-3-74	Filed Stip. & Order That time for the N.Y. Times Co. to produce documents is extended to 9-16-74...SoOrdered..Griesa, J.
9-3-74	Filed Stip. & Order that the time for all defts to answer or object to all sets of interrogs. is extended to 9-16-74 Griesa, J.
SEP. 5-74	Filed transcript of record of proceedings, dated JULY 12, 1974.
Sep.4-74	Filed Stip & Order extending to 8-21-74 time for pltffs to answer second set of interrogs. by West. Rockland Newspapers, Inc.) GR
Sep.4-74	Filed Stip & Order extending to 8-30-74, time for all defts to answer interrogs served by pltff. GRIESA,J.
Sep.4-74	Filed Stip & Order extending to 9-12-74 time for defts (N.Y. News & West. Rock.) to answer pltffs interrogs.....GRIESA,J.
Sep.4-74	Filed Stip & Order extending to 6-7-74 time for pltfts to answer second set of interrogs by (West. Rock.).......GRIESA,J.
Sep.4-74	Filed Stip & Order extending to 9-19-74 time for defts(N.Y. News & West. Rock.) re pltffs request for production & inspection. GRIESA,J.
Sep.4-74	Filed Stip & Order extending to 8-26-74, time for deft (West. Rock.) to respond to pltffs first request for production & inspection. GRIESA,J.
Sep.9-74	Filed defts Gen. Motors Corp. & GM Acceptance Corp. response to pltffs request for production of documents.

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70 Civ 5421A NATIONAL AUTO BROKERS CORP. -v- GENERAL MOTORS CORP. 70 C

GRIESA, J.

PAGE #28

DATE	PROCEEDINGS	Date o Judgm
ep.16-74	Filed answers & objections to pltffs interrogs. addressed to def (Niagra Frontier Automobile Dealers Assoc.)	
Sep 17-74	Filed Stip & Order that the time of all defts to answer pltffs' interrogs is extended to 9-30-74...and the time for the defts to object to pltffs' interrogs. is extended to 9-16-74...Griesa, J.	
Sep 17-74	Filed Answers & objections of deft Newsday, Inc. to pltffs' interrogs. dtd 7-[illegible]-74.	
Sep.19-74	Filed deft (Kem Dengler) answers & objections to pltffs interrogs.	
Sep.19-74	Filed answers & objections of Midtown Chevrolet & Gen. Motors to pltffs interrogs addressed to the dealer defts.	
Sep.19-74	Filed defts (GM Corp., GM Accept. Corp., Donner & Roche) interrog to pltffs with request to produce documents.	
Sep.19-74	Filed GMAC'S answers & objections to pltffs interrogs.	
Sep.19-74	Filed responses of deft GM Corp. to pltffs interrogs to the automobile manufacturers defts.	
ep.20-74	Filed answers & objections to interrogs addressed to deft (Buffal Courier-Express, Inc.)	
ep.20-74	Filed deft Gen. Motors Corp. affdvt & notice of motion for partial summary judgment dismissing certain counts of the complt. Time & date to be set by Court.	
Sep.20-74	Filed deftG(GM's) responses to pltffs interrogs to automobile maufacturers defts.	
Sep.20-74	Filed objections & general responses of Ford Motor Co. to pltffs interrogs addressed to the auto-manufacturer defts.	
Sep.20-74	Filed answers & objections of Midtown Chevrolet & GM to pltffs interrogs addressed to the dealer defts.	
S 20-74	Filed GMAC'S answers & objections to pltffs interrogs.	
Sep.20-74	Filed exhibits to Frink affdvt submitted in support of deft (GM'S) motion for partial summary judgment.	
Sep 23-74	Filed Stip. & Order that the time for the N.Y. Times to produce and answer the interrogs. is extended to 10-7-74...Griesa, J.	
Sep.23-74	Filed deft (Ford Motor) objections & general responses to pltffs interrrogs addressed to auto-mfr's defts.	
Sep.23-74	Filed deft (NY News) response to pltffs first request to produce documents.	
Sep.23-74	Filed answers & objections of deft N.Y. News to pltffs interrogs dated 7-19-74.	
Sep.24-74	Filed defts (Nat'l Better Bus. Bureaus, Better Bus. Bureau of Met. N.Y., & Better Bus. Bureau of West. Co. objections to interrogs.	
Sep.26-74	Filed deft (Rockland's) response to pltffs request for documents dated 6-20-74.	
t.2-74	Filed certain defts addt'l answers to Midtown Chevrolet-Pontiac to pltffs interrogs.	
t.2-74	Filed affdvt of service by Howard S. Viesz of notice of motion & affdvts on behalf of Gen. Motors Corp.	
t.2-74	Filed addt'l answer of (GMAC) to pltffs interrogs.	
t.2-74	Filed deft (GMC) request for admissions of fact.	
SEPT 27-74	PRE-TRIAL CONFERENCE HELD BY Griesa J.	
t.7-74	Filed Opinion #41280. Motion to further amend the amended complt in the Ambook case is granted, except for request to refer to 15 U.S.C. §§12, 13, 13a, 25 &26. The motion to file & serve an amended complt in the Nabcor action is granted, except for proposed Count 3. Motion to strike Count 12 of original complt is denied as moot.....So Ordered, GRIESA, J. m/n (Filed in 70 Civ. 5421B) & (Entered in 72 Civ 5438)	
	//////////////// Con't on Page #29	

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
Oct.11-74	Filed Stip & Order that time for deft General Motors to answer pltffs interrogs, dated 7-19-74 is extended from 9-30-74 to 10-10-74........GRIESA, J.		
Oct.15-74	Filed pltffs notice of deposition with request to produce documen		
Oct.15-74	Filed pltffs (Nabcor &Gen. Auto) objections to GM's request for admissions of fact dated 9-23-74.		
Oct.21-74	Filed defts (GM) answers to interrogs.		
Oct.22-74	Filed Stip & Order that time for deft (Chrysler Corp.) to answer or object to pltffs interrogs is extended to 10-16-74.....GRI		
Oct.29-74	Filed pltffs objections to defts (GM, GMAC, etc) interrogs with request to produce documents dated 9-16-74.		
Oct.29-74	Filed Stip & Order extending to 11-11-74 time for pltffs to answer or object to second set of interrogs by (West. Rockland), etc. GRIESA, J.		
Oct.29-74	Filed Stip & Order that objections to GM's request for admissions of fact interposed by pltffs Nabcor & Gen. Auto Sales are withdrawn. Pltffs to answer request for adm. by 11-12-74... GRIESA, J.		
Nov.1-74	Filed pltffs deposition of First Nat'l City Bank taken 8-15-74.		
Nov.1-74	Filed pltffs deposition of First Nat'l City Bank taken 8-16-74.		
Nov.1-74	Filed pltffs deposition of First Nat'l City Bank taken 8-16-74.		
Nov/1-74	Filed pltffs deposition of First Nat'l City Bank taken 8-19-74.		
Nov.1-74	Filed pltffs deposition of First Nat'l City Bank taken 8-23-74.		
Nov.1-74	Filed pltffs deposition of First Nat'l City Bank taken 8-23-74.		
Nov.1-74	Filed pltffs amended complt. with jury demand.		
Nov.11-74	Filed pltffs (Nabcor & Gen. Auto Sales) response to request for admissions of fact.		
Nov 20-74	Filed Stip & Order between both parties that the Transcrip dated 10-10-74 is amended by striking therefrom the word "couldn't" which appears on page 22, line 4, and substituting in place thereof the word "could". So Ordered --GRIESA, J.		
Nov 26-74	Filed [illegible] Sept 19-1974		
Nov 26-74	Filed [illegible] SEPT 27-1974		
Nov 26-74	[illegible] SEPT 20-1974		
Nov.21-74	Filed ANSWER of deft (West. Rockland News) to amended complt.		
Nov.25-74	Filed ANSWER to amended complt by deft (NY Times).		

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Con't on Page #30

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DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
Nov.20-74	Filed notice of motion & affdvt for substitution of administrator of Estate of E. Louis Jamelc, deceased.			
Nov.20-74	Filed Memo-End. on motion of 11-20-74. Motion granted, So Ordered, GRIESA,J. m/n			
Nov.26-74	Filed ANSWER to amended complt by (Newsday, Inc.)			TUC&R
Nov.26-74	Filed ANSWER to amended complt. by (New York News, Inc.)			TUC&R
Nov.26-74	Filed answers to second set of interrogs addressed to pltffs by (West. Rockland Newspapers, Inc.)			
Dec. 3-74	Filed transcript of record of proceedings, dated Oct 10, 1974			
Dec.13-74	Filed defts (GMC, GMAC, FGD, & JMR) notice of filing of deposition of Salvatore C. Cucia.			
Dec.18-74	Filed deft's (GMC, GMAC, Donner & Roche) notice of objections to transcript, of deposition of Walter J. Englert.			
2-24-74	Filed transcript of record of proceedings, dated 12-13-74			
2-24-74	Filed transcript of record of proceedings, dated 12-6-74			
ec.23-74	Filed deposition of Lawrence Giles (former employee of First Nat'l City Bank.)			
c. -74	Filed by certain defts notice of objections to transcript.			
ec.30-74	Filed by certain defts, notice of objections to transcript .			
Dec.30-74	Filed by certain defts, notice of objections to transcript.			
Jan.2-75	Filed motion by pltffs for an order to dismiss (Kem Dengler Chev) from this action.			
Jan.2-75	Filed Memo-End. on motion to dismiss (Kem Dengler). Motion granted. No opposition.....So Ordered, GRIESA,J.			
an.2-75	Filed pltffs affdvt & notice of motion to dismiss (Bano Buick, Mark Buick & Marty Motors from this action with prejudice.			
an.2-75	Filed Memo-End. on motion to dismiss. No opposition. Motion granted. So Ordered, GRIESA,J.			
an.2-75	Filed pltffs affdvt & notice of motion to dismiss with prejudice from this action, (Ruckle Pontiac Co.).			
n.2-75	Filed Memo-End. on motion of 1-2-75 to dismiss. No opposition. Motion granted......So Ordered, GRIESA, J.			
.3-75	Filed pltffs notice of deposition with request for production of documents by certain defts.			
.6-75	Filed deft's (GMC, GMAC, Donner & Roche) interrogs to pltffs.			
n -75	Filed Pltffs' Notice of Motion for a Prel. Inj. & a Partial Summary Judgment & other relief.....ret. 1-23-75...10Am			
n 10-75	Filed Memo. of Law in support of pltfis' motion for prel. inj. & etc.			

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CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT
Jan.21-75	Filed pltffs interrogs to dealer defts with request to produce documents.			
Jan.21-75	Filed Order that pltffs motion for protective order is continued pending receipt by Court of report by physician. Frank Maiorana shall submit to an exam by a physician selected by defts, or in default of such agreement, by the Court. F. Maiorana shall serve a sworn statement on defts by 1-31-75 identifying hospitals & physicians which have treated him since 1-1-74, etc.....GRIESA,			
Jan.21-75	Filed Joint Notice of Appeal by each pltff To USCA from the denial of pltffs motion for a preliminary injunction of order of 1-20-75. Copies mailed to:			

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Buffalo, N.Y. 14202

ISADORE SNITZER, ESQ.
Borins & Snitzer
Attorneys for Defendant Glen Campbell
Chevrolet, Inc.
1718 Statler Hilton Hotel
Buffalo, N.Y. 14202

(over)

Entries continued on Page #32

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	
Jan.23-75	Filed pltffs objections to interrogs & request for production of documents by deft Al Maroone Ford, Inc.	
Jan.23-75	Filed response of def't (Buffalo-Courier Express) to pltffs notice of deposition & for production of documents.	
Jan.23-75	Filed ANSWER of def't (GM) to the complt.	PWRW&C
Jan.23-75	Filed ANSWER of (GMAC) to the complt.	PWRW&C
Jan.23-75	Filed ANSWER of deft (Frederic G. Donner) to the complt.	PWRW&C
Jan.23-75	Filed ANSWER to the complt by deft (James M. Roche.)	PWRW&C
Jan.24-75	Filed defts (GM, GMAC, Donner & J. Roche) notice of objection to transcript.	
Jan.27-75	Filed defts (BBB of N.Y., West.^{ctal} County) objection to request to produce documents by pltff.	
Jan.27-75	Filed Order correcting a clerical error in order dated 1-20-75 & filed 1-21-75. Ordered that motion is granted, & that fourth decretal paragraph of said order is amended by adding at the end thereof the words "January 1, 1974"... GRIESA,J. m/n	
Jan.29-75	Filed affdvt in further support of pltffs motion for a prelim. inj., a partial summary judgment & other relief.	
Jan.28-75	Filed defts (GMC, GMAC, Donner & J. Roche) notice to take deposition of persons listed in Schedule A, annexed. Subpoena issued.	
Jan.31-75	Filed defts (GMC, GMAC, F.Donner & J.Roche) notice to take deposition of M.^{C}. Bud Morrison.	
Feb.5-75	Filed pltffs objections to interrogs of 12-31-74 by defts (GMC, GMAC, F. Donner & J. Roche.)	
Feb.5-75	Filed sworn statement by (Frank Mairana) a pltff in the action.	
Feb.7-75	Filed defts (GMC, GMAC, F. Donner & J.Roche) notice to take deposition of Rita Maiorana.	
Feb.13-75	Filed Stip & Order that pltffs withdraw their appeal from the deniel of pltffs motion for prelim. inj. of 1-20-75, without prejudice to pltffs rights to appeal any order with respect to pltffs motion filed 1-10-75......GRIESA,J.	
Feb.20-75	Filed deft West. Rockland Nsps. affdvt & notice of motion for summary judgment. Ret. 3-5-75	
Feb.20-75	Filed deft (West. Rockland) brief in support of motion.	

/////////////// Con't on Page #33

70 Civ 5421 A NATIONAL AUTO BROKERS, etal -v- GENERAL MOTORS CORP. 70 Civ

GRIESA,

DATE	FILINGS—PROCEEDINGS	
Feb.21-75	Filed pltff Ralph Ajello answers to interrogs by (GM, GMAC, etc.) (Two sets)	
Feb 24-75	Filed transcript of record of proceedings, dated Dec 13, 1974	
Feb 24-75	Filed transcript of record of proceedings, dated Dec 6, 1974	
Mar.10-75	Filed Stip & Order that depositions of R. Maiorana & E. Kotelotz, served by defts (GM) & subpoenas issued are vacated without prejudice. Pltffs shall not call either one as a witness on the trial of this action, with conditions as indicated.....GRIESA, J.	
Mar.10-75	Filed Stip & Order that pltffs shall not call Rose Guido as a witness on the trial of this action, with conditions as indica..... GRIESA, J	
Mar.12-75	Filed pltffs affdvt in support of motion to restore Counts 5-7 (Warranty).	
Mar.12-75	Filed pltff (Nabcor) affdvt in support of motion to restore Counts 5-7 (Warranty).	
12-6-74	Filed transcript of record of proceedings, dated 7-12-74	
12-10-74	Filed transcript of record of proceedings, dated 8-20-74	
6-75	Filed transcript of record of proceedings, dated 11-14-74 (B)	
3-10-75	Filed transcript of record of proceedings, dated 1-20-75	
3-10-75	[illegible] 1-24-75	
Mar 13-75	Filed defts. GMC, GMAC, F.G. Donner & J.M. Roche's affdvt. in opposition to pltffs' for preliminary Inj.	
Mar.12-75	Filed defts (Gm, GMAC, F. Donner & J. Roche) request for production & inspection.	
Mar 20-75	Filed Suppl. Affdvt. in further support of pltffs' motion for a Prel. Inj., a partial Summ. Judg. and orthor relief.	
Mar.21-75	Filed defts (Gm, GMAC, Donner & Roche) affdvt in opposition to pltffs motion for a preliminary injunction.	
Mar.21-75	Filed Memo-End. on motion of 1-10-75. Motion denied in accordance with minutes of 1-20-75. So Ordered, GRIESA, J	
Mar.21-75	Filed Memo-End. on motion of 1-10-75. Motion being reconsidered & further papers being submitted in accorance with minutes of 1-24-75. So Ordered, GRIESA, J	
Mar.21-75	Filed Memo-End. on motion of 1-10-75. Motion denied upon reconsideration. See minutes of 3-21-75. So Ordered, GRIESA, J	m/n
21-75	PRE-TRIAL CONFERENCE HELD BY J Griesa	

Continue on page 34

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
Mar 21-75	Filed Pltffs' Joint Notice of Appeal to USCA order of 3-21-7 ...Notices mailed on 3-26-75 to:Kelley Drye Warren Clark Carr Sullivan & Cromwell; Townley, Updike, Carter & Roger; Nixon, Hargrave, Devans & Doyle; Breed Abbott & Morgan; Shear Sterling; Paul, Weiss, Rifkind, Qharton & Garrison; Cahill, G Reindel; Campbell Hyman; Cross, Wrock, Miller & Vieson; Burns, Van Kirk, Jube & Kafer; Falk, Siemer, Glick, Tuppen & Sidney A. Weisberg,Esq; Philips & Mushkin; Williams,Williams, & Tisdall; Philips & Mushkin; Brennan,Callahan, Tesseyman, Ze Runfola & Noble; Borins & Snitzer; Phillips, Lyte, Hitchcock,B Huber; Hetzelt, Watson, McGarvey & Hetzelt; Frank & Delamater; Blair, Martin & Messina; Townley, Updike, Carter & Rodgers.		
Mar.24-75	Filed Memo-End. on affdvt dated 3-12-75. Motion denied. See minutes of 3-21-75. So Ordered....GRIESA,J		m/n
Mar.24-75	Filed Stip & Order of Dismissal as to deft Bates Pontiac Corp. with prejudice.......GRIESA,J		
Mar.28-75	Filed Order that pltff shall execute & deliver to GM's counsel authorization requesting the proper authorities to furnish Gm's counsel a copy of each tax return & amendment re inter #59 & 60. By 4-15-75 each pltff shall furnish Gm's counsel with a verified statement of each federal & state income ta re years 1966 through 1973. By 4-15-75 pltffs (Nabcor, F & Maiorana) to furnish GM's counsel federal & state tax retur filed by Pocono Futures, Leisurelife & U.S. Sales & Info. Se for years 1966 & 1973. Counsel for moving defts shall make one copy of all returns obtained from tax authorities expense of pltffs & shall furnish such copies to pltffs.... GRIESA,J m/n		
Mar.31-75	Filed Order extending to 4-10-75 for pltffs to have record on appeal transmitted to the USCA.......GRIESA,J		m/n
Apr.3-75	Filed deft (Paragon) affdvt in opposition to pltffs motion for a preliminary injunction.		
Apr.1-75	Filed pltffs-appellants designation of parts of transcript & statement of issues on appeal under Rule 10(b).		
Apr.16-75	Filed Order that pltffs att'y shall deliver typewritten transcr of testimony given at all depositions by 4-30-75. (2) Parag 6 of order entered 8-1-74 is amended by striking "15 busine days" & inserting in place therof "30 calendar days".		

D. C. 110

Con't on Page #35

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
	(3) Order amended & entered 8-1-74 (Taping order) shall be vacated, etc.			
	(4) Pltffs shall conduct no depositions until 4-30-75, or until pltffs atty has delivered typed transcripts of all depositions conducted on behalf of pltffs, in accordance with the taping order, to atty's for the defts, whichever first occurs.........GRIESA,J m/n			
4-23-75	Filed Affidavit in answer to motion of Batt Buick			
4-23-75	Filed Further afficavit of Batt Buick			
4-23-75	Filed Affidavit of Lewis Kaplan			
4-23-75	Filed Plaintiffs memo of law in asnwer to memo of GM for Summary judgment			
4-23-75	Filed Pltff memo in opposition to motion of Batt Buick			
4-23-75	Filednotice of motion and motion for preliminary injunction.			
4-32-75	Filed memo in support of Natl Brokers motion for a preliminary injuncton.			
4-23-75	Filed memo of GM in opposition to pltff motion for preliminary injunction.			
4-32-75	Filed Exhibits on Deposition of Pltff Michael O' Brien taken by GM			
4-23-75	Filed Exhibits of Depostiion of Pltff by F. Mairorana taken by GM			
4-23-75	Field motion & supporting brief of deft N.Y. TIMES (exhibit of deposti			
4-23-75	Filed deft exhibits marked on hearing on pltff motion.			
4-23-75	Filed exhibits of deposition & proliminary injunction hearing ,			
4-23-75	Filed affidavit & memo of law of deft American Assoc. Advertising Agence			
4-23-57	Filed memoin opposition to NY TIMES motion to consolidate.			
4-23-75	Filed affidavit in opposition to motion of Niagara Falls Gazette etc.			
4-23-75	Field additional further answers to second set of interrogs of defs.			
4-23-75	Field affidavit of Wm. Kemp			
4-23-75	Filed memo in support pltff motion under rule 23c for class action.			
4=23-75	Filed notice of motion granting leave for amend complaint etc.			
4-23-75	Filed notice of motion Counts 1-7 and 14-17.			
4-23-75	Filed notice of motion Counts 16-27			
4-23-75	Filed memo in support of pltff motion for class action determination			
4-23-74	Filed affidavit of L. Kelleher.			
4-23-75	Filed memo of law in support of motion to amend complaint.			
4-23-75	Filed pltffs affidavit of opposition to defts motion to dismiss Count 12			
4-23-75	Filed memo of plaintiff in opposition to defts motion to dismiss count 12			
4-23-75	Filed memo of Auto mfgr deft in support of motion for partial summary judg			
4-23-75	Filed jonit memo of certain deft in opposition to plaintiffs notions for class action determinations.			
4-23-75	Filedexhibits from deposition & preliminary injunction hearng .			
4-23-75	Filed affidavit of opposition to class action motions.			
4-23-75	Filed excerpts from deposition and preliminary injunction hearing .			

70 civ 5421A National Auto Brokers -v- General Motors 70 civ 5421

D. C. 110 Rev. Civil Docket Continuation Page 36 GRIESA, J.

DATE	PROCEEDINGS
-23-75	Filed pltff objection to interrogs.
4-23-75	Filed notice of change of address
4-23-75	Filed affidavit in opposition to motion of defts
4-23-75	Filed memo of pltff natl Auto Brolers in opposition to motion of de
4-23-75	Filed affidavit of F. Mairano
4-23-75	Filed pltff memo in oppositio to motion for partial summary judgment.
4-23-75	Filed reply memo of defts national better busuness Bureaus.
4-23-75	Filed affidavit of Norman Gottlieb
4-23-75	Filed memo of plaintiff Natl Auto Brokers in reply to the reply memo
4-23-75	Filed answers and Objection of deft American Motors.
4-23-75	Filed excerts of deposition & proliminary injunction hearing testim
4-23-75	Filed excerpts from depostion and preliminary injuction hearing etc
4-23-75	Filed excerpts from depostions refferred to in emo of Auto Mgfr.
4-24-75	Filed affidavit of service (filed orig June 11,1973).
4-24-75	Filed answers & ofjetctions to pltffs first set of interoggs. (orig. filed 1-28-72)
4-24-75	Filed notice of entry (orig filed 1-15-73).
4 -24-75	Filed brief in support of motion (orig filed 3-14-73).
4-24-75	Filed notice of motion (orig filed 3-20-73).
12-10-74	Filed deposition of Salvatore C. Cuccia
8-6-73	Filed rejoinder and supplemtntal memo of the N.Y. Times
8-6-73	Memo in support of plainitff motion;under rule23(c)
8-6-73	filed memo in opposition to pltff motion to determine the propriety of the pltff and def. classes
8-6-73	Filed memo in opposition to pltff motion to determine the propriety pltff etc.
8-6-73	Filed Affidavit of Carl E. Person
4-23-75	Filed transcript of record of proceedings, dated Feb. 10, 1975
Apr.25-75	File pltffs answers & interrogs propounded by defts on12-31-74.
Apr.28-75	Filed notice that original record on appeal has been certified & transmitted to the USCA.
May 1-75	Filed Stip & Order that this stipulation re depositions of persons listed on Schedule A annexed shall be made part of the record on the pending appeal & transmitted to the USCA....GRIESA.J
May 5-75	Filed stipulation as to the admission of March 21-75 transcript as part of supple record on appeal.
May 5-75	Filed transcript of record of proceedings dtd· March 21-75..
May 5-75	Filed transcript of record of proceedings dtd· March 27-75.
May 5-75	Filed pltffs answers to interrog No.1 of the GM interrogs dated 12-31-74.
May 6-75	Filed notice that supplemental records on appeal has been Certified & transmitted to the USCA.
May 7-75	Filed defts (GMC, GMAC, Donner & Roche) affdvt & notice of motion for atty's fees. Ret. 5-19-75
May 7-75	Filed defts memo of law in aupport of motion for atty's fees, costs & disbursements.
May 7-75	Filed Stip & Order re deposition of General Motors employee...... GRIESA, J
May 9-75	Filed deposition of Mervin C. Morrison.
5-16-75	Filed Pltffs' Cross Notice of Motion for a partial summ judg..etc....ret.5-15-75 at 10Am
5-16-75	Filed Pltffs' Memo of Law by ~~pit~~ in opposition to deft. 'West-Rockland' mtion for summ judg. and in support of its cross motion for summ. judg.

continue on page 37

70 civ 5421 A Nat'l Auto Brokers -v- General Motors

Page 37

DATE	PROCEEDINGS	Date Ord. Judgment
5-16-75	Filed Excepts from depositions referred to in memo of Auto. Manuf. Defts. in support of motion for partial summ. judg.	
5-16-75	Filed Excepts from depositions and Prle. Inj. hearing testimony referred to in joint memo of certain defts. in oppositon to pltffs' motions for class action determination.	
5-16-75	Filed Exhibits from depositions and Prel. Inj. Hearing, ref. to in joint memorandum.	
5-16-75	Filed Exhibits from depositions and Prel. Inj hearing referred to in memorandum of auto manuf. defts.	
-16-75	Filed Bons for costs on appeal - Northwestern Nat'l Ins. Co. - $500.	
5-19-75	Filed notice of filing of deposition of Merwin C. Morrison.	
-23-75	Filed Pltffs' Notice of Cross Motion for an Order under 65 (a0 granting prel. Inj....etc....ret.	
5-23-75	Filed Pltffs' Memo-of Law in support its motion for Prel. Inj. etd.	
5-27-75	Filed defts (GMC, GMAC, Donner & Roche) notice of objections to transcript of deposition of N lson Karney.	
ay 28-75	FiledStip & Order extending to 5-26-75 for motion awarding costs. GRIESA,J	
ay 28-75	Filed Order extending to 6-9-75 for defts to respond to pltffs motion under Rule 65.......GRIESA,J m/n	
Jun.3-75	Filed defts (GMC, GMAC Donner & Roche) notice of objections to certain portions of transcript of deposition of Albert T. Olson, taken 10-7-74.	
Jun.3-75	Filed defts (GMC, GMAC, Donner & Roche) notice of objections to transcript of deposition of Peter Gordon, taken 12-12-74.	
.2-75	Filed Memo-End. on motion of 5-23-75. Motion withdrawn as per minutes of of 5-28-75. So Ordered, GRIESA,J m/n	
Jun.10-75	Filed Order that Frank Maiorana shall be precluded from testifying at the trial unless he shall have submitted to continued oral deposition by defts which shall have been completed not less than 60 daysprior to the trial of this action......GRIESA,J m/n	
Jun.13-75	Filed defts (GMC, GMAC, Donner & Roche) notice of objections to transcript.	
m.17-75	Filed Stip & Order that depositions of pltffs (Maiorana & Nat'l Auto Brokers) by A. Maiorana are cancelled. A. Maiorana will appear at offices of Paul Weiss Rifkind Wharton & Garrison on 6-10 & 6-24-75......GRIESA,J	
un.24-75	Filed Order of Dismissal as to deft Marty Motors pursuant to Rule 41 (a), with prejudice........GRIESA,J m/n	
n.24-75	Filed Order of Dismissal as to deft Bano Buick, pursuant to Rule 41(a), with prejudice.........GRIESA,J m/n	
un.24-75	Filed Order of Dismissal as to deft Mark Buick Corp. pursuant to Rule 41(a) with prejudice.......GRIESA,J m/n	
ly 1-75	Filed pltffs answers to interrogs #57 of the GM interrogs., (pltffs Frank & Anthony Maiorana).	
1.8-75	Filed Reply affdvts of [illegible] (Wm. Nicol, Mark Arnold, & Wm. Morris) in support of Westchester Rockland motion for summary judg'mt.	
1.8-75	Filed reply brief in support of motion for summary judgment by deft (Westchester Rockland Newspapers, Inc.)	
14-75	Filed defts (GM Corp., GMAC, G. Donner & J. Roche) notice to take deposition of Ernest Cuzzo, as a witness.	
15-75	Filed defts (GM Corp., GMAC, E. Donner & J. Roche) notice to take deposition of Isadore Gitler.	

Con't on page #38

0 Civ 5421 NATIONAL AUTO BROKERS -v- GENERAL MOTORS 'A' 40 70 Ci GRIE

DATE	PROCEEDINGS
7-18-75	Filed transcript of record of proceedings dated May 28 1975
7-29-75	Filed (General Motors) request #2 for admissions of fact.
7-29-75	Filed Stip & Order adjourning deposition of Ernest M. Turco to 7-23-75........GRIESA,J
8-4-75	Filed defts (Gen. Motors) request #3 for admissions of fact.
8-12-75	Filed Deft (General Motors) request No. 4 for admissions of fa
8-20-75	Filed True Copy of order of Judgment from Eastern Dist. of Pa. directing that said judgment be filed & recorded in these actions.
8-21-75	Filed deposition of Peter M. Russ.
8-28-75	Filed pltffs response to request # 2 & # 4 for admissions of fact & objections to request #3 for admissions of fact.
8-28-75	Filed deposition of Peter Anthony Gordon.
8-28-75	Filed deposition of William Nicol.
8-28-75	Filed deposition of Westchester-Rockland Newspapers (by Mark Richard Arnold.)
10-21-75	Filed pltffs response to request #3 for admissions of fact.
10-31-75	Filed pltffs notice to take deposition with request for production of documents of persons listed.
11-10-75	Filed defts (GMC, GMAC, Donner & Roche) notice to take deposition of William Nash, as a witness.
01-27-76	Filed pltffs' pretrial brief as to liability of the General Motors Group of defts. (including Franchisees of General Motors) for violations of the Sherman Act.
01-30-76	Filed affdvt. of mailing byan individual of plffs' pretrial brief as tothe General Motors Group of defts, etc.- on all defts. on 01-26-76
02-03-76	Filed pltff's notice of taking deposition of defts N.Y. News, Inc , Newsday, Inc. and Westchester-Rockland Newspapers, Inc. on the dates and times listed on Schedule A annexed hereto. (also filed in 72 Civ.5438
02-03-76	Filed pltffs. Nabcor and Nabcor East interrogs. to defts. New York News, Inc. New York Times, Inc., Newsday, Inc. and Westchester-Rockland Newspapers Inc. (also filed in 72 Civ. 5438)
02-17-76	Filed deft. Westchester Rockland Newspapers, Inc. response to interrogs. and notice of deposition dated 02-02-76.
03-05-76	Files ANSWER of deft. Luby Chevrolet Co, Inc. to the complaint (Chak)
03-09-76	Filed deft. The N.Y. Times Company (" the Times") answers to interrogs.
03-10-76	Filed deft. New York News Inc's answers and objections to interrogs.
03-12-76	Filed transcript of record of proceedings, dated 11-6-75
03-16-76	Filed stip & order extending the time for deft. Newsday, Inc. to answer interrogs. dated 02-02-76 from 03-08-76 to 03-20-76. So ordered- GRIESA, J.
03-19-76	PRE-TRIAL CONFERENCE HELD BY GRIESA, J.
03-24-76	Filed defts. General Motors Corp., General Motors Acceptance Corp., Frederic Donner and James M. Roche notice of taking deposition William Nash c/o General Development Corp. on 04-19-76
04-05-76	Filed Order severing pltffs' claims aginst defts. First National City Bank, Better Business Bureau of Metropolitan New York, Better Business Bureau of Westchester County, Better Business Bureau of Western New York, National Better Business Bureau, Buffalo Courier Express, New York News Inc., The N.Y. Times Co., Newsday, Inc. and Westchester Rockland Newspapers, Inc... GRIESA, J. (m/n)
04-05-76	Filed stip & order extending the time of deft. Newsday, Inc. to answer in from 03-26-76 to 04-16-76. So ordered- GRIESA, J.
05-03-76	Filed pltffs' affdvt. and notice of motion for an order pursuant to Rule FRCP with prejudice and without costs as to deft. Luby Chevrolet Co., In Ret. 05-11-76

D. C. 109 Criminal Continuation Sheet

(CONT'D PAGE # 39-- OVER)

DATE	PROCEEDINGS
05-04-76	Filed deft Newsday, Inc's answers and objections to interrogs. dated 02-02-76
-04-76	Filed pltffs. notice of taking deposition of deft. General Motors Corp. by the persons identified in Schedule A hereto, on the times and dates listed on said schedule.
05-10-76	Filed deposition of Isadore Gitler taken on 7-30-75
05-12-76	Filed defts. General Motors Corp., General Motors Acceptance Corp, Frderick G. Donner and James M. Roche notice of filing of deposition of Isadore Gitler.
5-07-76	PRE-TRIAL CONFERENCE HELD BY GRIESA, J.
5-28-76	Filed Memo Endorsed-on letter of May 17th, 1976. .....The application for severance is granted. Trial of the General Motors matter will commence Sept.27,1976 and the matter involving the other motions defendants will be tried immediately following. Submit Order. GRIESA, J. m-n
06-01-76	Filed memo endorsed on motion filed 5-3-76. Motion granted. So ordered- GRIESA, J. (m/n)
06-02-76	Filed deft. General Motors' pre-trial memorandum
6-04-76	Filed transcript of record of proceedings, dated 11-13-75
6-04-76	Filed transcript of record of proceedings, dated 11-20-75
6-04-76	Filed transcript of record of proceedings, dated 3-19-76
6-04-76	Filed transcript of record of proceedings, dated 3-22-76
6-21-76	Filed pltffs. "communications interrogs." to the defts. named.
6-29-76	Filed deft. Bob Bain Chevrolet, Inc.'s answers and objections to communications interrog
7-07-76	Filed Stip and Order that at conclusion of pltffs' cross-exam of Mr. Nass if any, the deposition shall be adj sine die in order to permit counsel f the undersigned defts to examine the transcript & determine whether they wish to conduct redirect exam.etc.as indicated.So Ordered.GRIESA,J
7-07-76	Filed order severing certain parties from pltffs' claims - (Non.General Motors defts) Ford Motor Company,Henry Ford II, Lee Iacocca Semon E.Knudsen,Chrysler Corporation,American Motors Corporation, Gotham Ford,Inc. Grand Ford,Inc.Al Maroone Ford,Inc.,Robin Ford Sale Inc.Rusher Ford Sales,Inc.Semmes Ford Inc. & Yonkers Ford,Inc. (General Motors defts) General Motors Corporation,General Motors Acceptan Corporation,Frederic G.Donner,James.M.Roche,Bob Bain Chevrolet.Paul Batt Buick,Inc.,Glen Campbell Chevrolet,Inc.Hamister-Cilloglv Chevro Inc.,Paragon Oldsmobilelo,Inc. and Niagara Frontier Automobile Deal Association,Inc., etc. as indicated.GRIESA,J
-07-76	Filed defts. Frederick G. Donner and James M. Roche affavts. and notice of motion for an order dismissing the complaint as to said defts... Ret. 7-19-76
-09-76	PRE-TRIAL [illegible] GRIESA, J
-23-76	Filed memorandum of defts. Frederic G. Donner and James M. Roche in support of their motion for summary judgment.
-05-76	Filed pltffs' notice of taking depositions upon oral examination of the witnesses described in Schedule A hereto at the dates and times indicated.
-12-76	Filed Pltffs' Affidavits and Notice of Cross-Motion for an order a continuencee and for discovery.
-12-76	Filed Pltffs' Memorandum of Law in opposition to motion forsummary judgment of defts Donner and Roche and in support of pltffs' cross-motion for a continuance and for discovery.
-17-76	Filed Defts Frederick G.Donner and James M. Roche's Reply Memorandum in support of their motion for Summary Judgment.
31-76	FILED TRANSCRIPT OF RECORD OF PROCEEDINGS,DATED: 7-27-76.
31-76	Filed deft. General Motors' request No. 5 for admissions of fact.
1-76	Filed deft. General Motors' request No. 6 for admissions of fact.

CONTINUED ON PAGE NO. 40

DATE	PROCEEDINGS
	GRIESA, J
09-02-76	Filed Defts General Motors Corporation, General Motors Acceptance Corporation, F.G. Donner and J.M. Roche Affidavit and Order to Show Cause to modify subpoena duces tecum. RET: Sept. 8, 1976 at 4:30 PM in Room No. 1505. WERKER, J
9-13-76	Filed pltffs memorandum of law on the standard to be employed by the Court in determining the preliminary questions of admissibility...
9-13-76	Filed Deft. (Ford Motor Co.) Deposition of E.M. Turco taken on 4-3-73.
9-13-76	Filed Deft. (Ford Motor Co.) Continued Deposition of E.M. Turco taken on 07-23-73.
9-13-76	Filed Deft. (Ford Motor Co.) Deposition of R.B. Heim taken on 4-9-73.
9-13-76	Filed Deft. (Ford Motor Co.) Deposition of A.J. Young taken on 4-11-73.
09-15-76	Filed Memorandum Decision-opinion No. 45084....Defts Donner and Roche move for summary judgment dismissing the complaint. Pltffs cross-move pursuant to Rule 56(f) for furtherdiscovery. Decision on the Donner and Roche motion is deferred. Pltffs' motion for further discovery is granted to the following extent. etc. as indicated. GRIESA, J m-n
9-15-76	Filed Deft GMC Request No.7 for admissions of fact..
9-15-76	Filed Deft. (General Motors and Ford) Supplemental Answers to Interrogs.
9-15-75	Filed Deft. General Motors co. Gen. Motors Accept. corp., Donner & Roache) Notice of Filing Deposition of Robert B. Heim, Alfred J. Young and Ernest M. Turco on 9-13-76
09-17-75	Filed Affdvt. of Service of Nan J. Masters of Request No. 7 for Admissions of Fact.
-17-76	Filed Pltffs Request for Admissions.
-2[illegible]-75	Filed Affdvt. of Service by and individual . Copy of Request for admission of Fact Number 5 and 6.. on 10-03-76 Served: Sidney A. Weisberg, Esq. 225 Broadway New York, N.Y.
09-29-76	Filed Defts General Motors Corporation, General Motors Acceptance Corporation, Frederic G. Donner and James M. Roche Prehearing Memorandum.
09-30-76	Filed Pretrial Examination of John J. Snyder held on 09-10-74.
09-30-76	Filed Con't Pretrial Examination of John J. Snyder held on 09-11-74.
10-01-76	Filed stip and order re: prehearing procedures. So Ordered. GRIESA, J
10-04-76	Filed Pltffs. List if Exhibits and Designation of Testimony.
10-04-76	Filed Deposition of Walter J. Englert by Pltff. on 09-27-74.
10-04-76	Filed deposition of Robert L. Berg by the Pltff. on 10-08-74.
10-04-76	Filed Deposition of Nelson M. Karney by the Pltff. on 10-10-74.
10-04-76	Filed Deposition of Albert T. Olsen by the Pltff. on 10-07-74.
10-04-76	Filed Deposition of Robert G. English by the Pltff. on 06-04-75.
10-04-76	Filed Deposition of Edward Belcher by the Pltff. on 05-01-76.
10-05-76	Filed GM defts' prehearing exhibit list.
10-05-76	Filed GM defts. designation of deposition testimony to be offered at hearing.
10-05-76	Filed GM defts' objections to proposed exhibits, designations of deposition testimony and cross-designations of deposition testimony.
10-06-76	Filed GM defts notice of filing of deposition of John J. Snyder
10-6-76	Filed GM defts' notice of filing of depositions of Edward Belcher, Robert L. Berg, Walter J. Englert, Robert G. English, Nelson M. Karney and Albert T. Olson.
10-06-76	Filed deposition of John P. Lowe taken on 5-21-76.
-08-76	Filed deposition of Frederic G. Donner taken on 9-27-76 (n/n)

(CON'T'D - PG. # 41 (OVER)

DATE	PROCEEDINGS
10-13-76	Filed deposition of Dale Strimple taken on 4-2-73 (m/n)
10-13-76	Filed continued deposition of Dale Strimple taken on 6-26-75
10-13-76	Filed continued deposition of Dale Strimple taken on 10-16-75
10-13-76	Filed dontinued deposition of Dale Strimple taken on 10-17-75
10-13-76	Filed deposition of Anthony Maiorana taken on 3-26-73
10-13-76	Filed continued deposition of Anthony Maiorana taken on 3-27-73
10-13-76	Filed continued deposition of Anthony Maiorana taken on 2-25-75
10-13-76	Filed continued deposition of Anthony Maiorana taken on 2-26-76
10-13-76	Filed continued deposition of Anthony Maiorana taken on 2-27-76
10-13-76	Filed continued deposition of Anthony Maiorana taken on 5-30-75
10-13-76	Filed continued deposition of Anthony Maiorana taken on 6-10-75
10-13-76	Filed continued deposition of Anthony Maiorana taken on 6-24-75
10-13-76	Filed continued deposition of Anthony Maiorana taken on 7-15-76
10-13-76	Filed continued deposition of Anthony Mairoana taken on 7-22-75
10-13-76	Filed deposition of Dale Strimpel taken on 3-4-75
10-13-76	Filed examination before trial of pltff. Frank Maiorana taken on 3-14-73
10-13-76	Filed continued EBT of pltff. Frank Maiorana taken on 3-15-73
10-13-76	Filed continued deposition of pltff. Frank Maiorana taken on 3-28-76
10-13-76	Filed continued deposition of pltff. Frank Maiorana taken on 3-29-73
10-13-76	Filed continued deposition of pltff. Frank Maiorana taken on 3-30-73
10-13-76	Filed continued deposition of pltff. Frank Maiorana taken on 4-5-73
10-13-76	Filed continued deposition of pltff. Frank Maiorana taken on 4-6-73
10-13-76	Filed continued deposition of Frank Maiorana taken on 9-16-75
10-13-76	Filed continued deposition of Frank Maiorana taken on 9-25-75
10-13-76	Filed Oral deposition of Frank Maiorana taken on 10-7-75
10-13-76	Filed continued deposition of Frank Maiorana taken on 10-14-75
10-13-76	Filed continued deposition of Frank Maiorana taken on 3-31-76
10-13-76	Filed continued deposition of Frank Maiorana taken on 4-7-76
10-13-76	Filed continued deposition of Frank Maiorana taken on 4-14-76
10-13-76	Filed continued deposition of Frank Maiorana taken on 4-21-76
10-13-76	Filed continued deposition of Frank Maiorana taken on 11-4-75
10-13-76	Filed continued deposition of Frank Maiorana taken on 5-5-76
10-13-76	Filed continued deposition of Frank Maiorana taken on 5-12-76
10-13-76	Filed continued deposition of Frank Maiorana taken on 5-19-76
10-13-76	Filed continued deposition of Frank Maiorana taken on 6-2-76
10-13-76	Filed continued deposition of Frank Maiorana taken on 6-23-76
10-13-76	Filed continued deposition of Frank Maiorana taken on 7-7-76
10-14-76	Filed GM defts' notice of filing of deposition of John P. Lowe on 10-6-76
10-14-76	Filed deposition of Frederic C. Donner taken on 9-27-76
10-14-76	Filed deposition of James M. Roche taken on 10-5-76
10-15-76	Biled GM defts' supplemental designation of Mr. Lowe testimony to be offered at hearing.
10-21-76	Filed stip & order correcting transcript of deposition of Frederic G. Donner
10-21-76	Filed GM defts' notice that the deposition of Frederic C. Donner was filed on 10-8-7
10-21-76	Filed GM defts' notice that the depositions of Frank Maiorana (22 volumes), Anthony Maiorna (10 volumes) and Dale Strimple (5 volumes) were filed on 10-13-76
10-21-76	Filed GM defts' proposed voir dire examination.
10-26-76	Filed affdvt. of service by mail by an individual of notices of filing of depositions of John P. Lowe, Edward Belcher, Robert L. Berg, Walter J. Englert, Robert G. English, Nelson M. Karney and Albert T. Olson upon Carl E. Person, Esq. on 10-20-76
10-27-76	Filed Defts General Motors Corporation, General Motors Acceptance Corpor Frederic G. Donner and James M. Roche Memorandum in support of motio to strike.

CONTINUED ON PAGE NO. 42

NATIONAL AUTO BROKERS VS: GENERAL MOTORS

(Pg. #42)

DATE	PROCEEDINGS GRIESA, J
11-16-76	Filed memorandum of General Motors defts. in support of motion to preclude testimony.
11-29-76	Filed pltff. Frank Maiorana affdvt. under 28 USC Sec. 144
10-06-76	BEFORE GRIESA, J. NON-JURY TRIAL BEGUN and cont'd 10-7, 10-12, 10-13, 10-14, 10-15, 10-19
10-20-76	TRIAL CONT'D WITH JURY, 10-21, 10-26, 10-27, 10-28, 10-29, 11-01, 11-03, 11-04, 11-8, 11-09, 11-11, 11-12, 11-15, 11-16, 11-17, 11-18 11-22, 11-23, 11-24, 11-29, 11-30, 12-01, 12-02, 12-03
12-06	trial concluded. (total trial days-33). Pltffs' case dismissed as to certain defts. Judgment to be submitted by defts.
12-16-76	Filed Final Judgment-- that the complaint is dismissed on the merits and with prejudice as against defts. General Motors Corp. (s/h/ in its own right and as Midtown Chevrolet, Inc) General Motors Acceptance Corp., Frederick G. Donner (s/ha Frederick G. Donner), James M. Roche (s/h/a James P. Roche), Bob Bain Chevrolet, Paul Batt Buick, Inc. Glen Campbell Chevrolet, Inc. Gillogly Chevrolet, Inc. (s/h/a Hamister-Gillogly Chevrolet, Inc), Niagra Frontier Automobile Dealers Association, Inc. and Paragon Oldmobile, Inc-- the defts. named in paragraph 1 recover their costs and disbursements to be taxed against pltffs. National Auto Brokers Corp., Frank Maiorana, Anthony Maiorana, General Auto Sales & Leasing Corp (s/h/a General Autol Sales & Leasing Inc.) Dale Strimple (s/h/a Dale Strimpel), Alfred J. Young, Sr., Nabcor of East New York, Inc., and Ralph Ajello, as administrator of the Estate of E. Louis Janele, a/k/a Louis H. Jamele, jointley and severally, etc.. GRIESA, J. Judgment entered 12-16-76 Clerk (m/n)
12-22-76	Filed defts. General Motors Corp., General Motors Acceptance Corp., Frederic G. Donner and James M. Roche notice of entry of a true copy of a final judgment entered on 12-16-76.
12-30-76	Filed transcript of record of proceedings dated 8-4-76; 9-8-76; 10-6, 7, 12, 13-
12-30-76	Filed transcript of record of proceedings dated 10-14, 15, 19, 20-76
01-04-77	Filed Bill of Costs as taxed in the sum of $ 26,913.52, in favor of deft. General Motors Corp. as against certain pltffs. as refelcted in the Judgment and docketed as Judgment # 77,141.
01-11-77	Filed Bench decision dated 12-06-76
01-12-77	Filed pltffs' notice of cross-motion for an order reviewing the action of the Clerk in taxing costs.. RTBF. (at a time and place to be fixed by the Cou
01-12-77	Filed pltffs' brief in opposition to GM's motion and in support of pltffs' cross-motion to review the Clerk's taxation of costs.
01-12-77	Filed deft. General Motors Corp. affdvt. and notice of motion for an order reviewing the action of the Clerk in taxing costs herein and allowing as costs against pltffs the items indicated... RTF. (at time and place fixed by Court)
01-12-77	Filed deft. GM memorandum in support of motion to review taxation of costs.
01-14-77	Filed pltffs. National Auto Brokers Corp., Frank Maiorana, Anthony Maiorana, General Auto Sales & Leasing, Inc., Dale Strimple, Nabcor of East New York, Alfred J. Young, Sr and Ralph Ajello, as Administrator of the Estate of E. Louis Jamele, notice of appeal to the USCA from the final judgment entered on 12-16-76.. Copies to: Paul, Weiss, Rifkind, Wharton & Garrison- Phillips & Martin- Joseph C. Tisdall- Brennan, Callahan, Tesseyman, Zelman, Runfola & Noble- Borins & Snitzer- Sidney A. Weisberg and Hetzelt, Watson, McGarvey & Hetzelt. Ent. 01-14-77
01-31-77	Filed Defts General Motors Reply Memorandum in support of motion review taxation of costs and in opposition to pltffs cross-mo
1-31-77	Filed bond in amount of $250.00 by Nat'l Auto Brokers (COSTS ON APPEAL) by Northwestern National Ins.Co.....

D. C. 109 Criminal Continuation Sheet

OVE

(Cont'D on p. 43)

DATE	PROCEEDINGS
2-8-77	Filed transcript of record of proceedings, dated Oct. 20, 26, 27, + 28, 1976
2-8-77	Filed transcript of record of proceedings, dated Oct. 29, 1976 + Nov. 1, 16, + 17, 1976
2-8-77	Filed transcript of record of proceedings, dated Nov. 18, 19, 22, 23, + 24, 1976
2-8-77	Filed transcript of record of proceedings, dated Nov. 29 + 30, 1976 and Dec. 1, 2, 3, + 6, 197
-11-77	Filed transcript of record of proceedings, dated Nov. 3, 4, 7, 8, 9, 1976
3-11-77	Filed transcript of record of proceedings, dated Nov. 11, 12, 15, 1976
03-22-77	Filed - defts- appellees objections to pltffs-appellants designation of exhibits pursua to sec.11(b) of the Second Circuit Rules and cross-designation.
04-12-77	Filed Memorandum-- for the reasons stated, I have reviewed the list of depositions submitted in defts' bill of costs. I have no doubt whatever that all of these depositions were necessarily taken in preparation for the trial. The costs requested by defts. are allowed in their entirety. The Clerk awarded $15,954.62 This award should be increased to $21,475.60. So ordered- GRIESA, J. (m/n)

AS

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

NATIONAL AUTO BROKERS CORP., et al.,	:	70 Civ. 5421 (TPG)
Plaintiffs,	:	2nd Cir. 77-7037
-against-	:	
GENERAL MOTORS CORPORATION, et al.,	:	CLERK'S CERTIFICATE
Defendants.	:	

- -x

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, DO HEREBY CERTIFY that the certified copy of docket entries letter A to AS , the original filed papers numbered 1-894 , inclusive, and the designated exhibits accompanying this certificate constitute the record on appeal in the above-entitled proceeding.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 27TH day of April, in the year of our Lord, one thousand nine hundred and seventy-seven, and of the Independence of the United States the two hundred and first.

Raymond F Burghardt
CLERK OF THE COURT

CIVIL DOCKET

[illegible]ATES DISTRICT COURT

[illegible] 36 Rev.

Jury demand
11-1-74 - P[illegible]

NATIONAL AUTO BROKERS CORP., FRANK MAIORANA,
ANTHONY MAIORANA, COURTESY AUTO BROKERS, [illegible]
AUTO SALES & LEASING, INC., [illegible]
ROBERT B. [illegible] d/b/a [illegible]
[illegible] and ALFRED J. YOUNG, SR.
d/b/a [illegible] J. YOUNG SR. AUTO SALES,

1/14

Plaintiffs.

-VS-

GENERAL MOTORS CORPORATION, FREDERICK G. DONNER,
[illegible] COUNTRY FORD
[illegible] WILTON D. [illegible]
CORPORATION [illegible]
[illegible]
CORP., [illegible]
[illegible] CHEVROLET, INC.
[illegible] CHEVROLET-OLDSMOBILE, INC.; [illegible]
[illegible] GENERAL [illegible]
[illegible] INC., [illegible] CHEVROLET 1-2-75
[illegible] CHEVROLET CO., INC., [illegible]
[illegible] MOTORS CORP.
[illegible]ORATION, [illegible]
[illegible] FORD [illegible]
[illegible] CO. [illegible]
[illegible] FORD [illegible] 7/16/
[illegible]
[illegible] 9/29/
INC., BANK OF DELAWARE, C.I.T. FINANCIAL COR-
PORATION, CITIZENS BANK & TRUST CO. OF MARYLAND,
COMMERCIAL CREDIT CORP., COUNTY TRUST COMPANY 1-27
[illegible] MOTORS ACCEPT-
ANCE CORPORATION; [illegible] TRUST COMPANY,
[illegible] TRUST CO., WILMINGTON TRUST COMPANY;
THE BETTER BUSINESS BUREAU OF METROPOLITAN NEW
YORK, INC.; BETTER BUSINESS BUREAU OF WEST-
CHESTER COUNTY, [illegible]
[illegible] NEW YORK, INC., NATIONAL BETTER BUSINESS
BUREAU, INC.; THE BUFFALO COURIER-EXPRESS, INC.;
[illegible] AUTOMOBILE [illegible] 4-28
INC.; [illegible] DOW JONES &
COMPANY, INC.; [illegible] PUBLISHING CO.; THE
[illegible] CLARK CORPORA-
TION, INC.; [illegible] THE
[illegible] INC.
[illegible]
[illegible]
[illegible]

BEST COPY AVAILABLE

Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL AUTO BROKERS CORP., FRANK MAIORANA, ANTHONY MAIORANA, COURTESY AUTO BROKERS, GENERAL AUTO SALES & LEASING, INC., DALE STRIPPEL, ROBERT B. HEIM d/b/a ROBERT HEIM AUTO SALES, LOUIS H. JANELE d/b/a LOUIS AUTO MART, NABCOR OF EAST NEW YORK, INC. and ALFRED J. YOUNG, SR. d/b/a A. J. YOUNG, SR. AUTO SALES,

Plaintiffs,

-vs-

GENERAL MOTORS CORPORATION, FREDERICK G. DONNER, JAMES P. ROCHE, FORD MOTOR COMPANY, HENRY FORD, II, LEE IACOCCA, SEMON E. KNUDSEN, CHRYSLER CORPORATION, AMERICAN MOTORS CORPORATION; BOB BAIN CHEVROLET, BARO BUICK, INC., BATES PONTIAC CORP., PAUL BATT BUICK, INC., GLEN CAMPBELL CHEVROLET, INC., CURRY CHEVROLET, INC., KEN DENGLER CHEVROLET-OLDSMOBILE, INC., GOTHAM FORD, INC., GRAND FORD, INC., HALLMAN CENTRAL CHEVROLET CO., INC., BANISTER-GILLOGLY CHEVROLET, INC., LUBY CHEVROLET CO., INC., MARK BUICK CORP., AL MARCONE FORD, INC., MARTY MOTORS CORPORATION, MIDTOWN CHEVROLET, INC., PARAGON OLDSMOBILE, INC., ROBIN FORD SALES, INC., RUCKLE PONTIAC CO., INC., RUSHER FORD SALES, INC., SEELES FORD INC., YONKERS FORD, INC.; NIAGARA FRONTIER AUTOMOBILE DEALERS ASSOCIATION, INC.; ASSOCIATES DISCOUNT CORPORATION OF DELAWARE, INC., BANK OF DELAWARE, C.I.T. FINANCIAL CORPORATION, CITIZENS BANK & TRUST CO. OF MARYLAND, COMMERCIAL CREDIT CORP., COUNTY TRUST COMPANY, FIRST NATIONAL CITY BANK, GENERAL MOTORS ACCEPTANCE CORPORATION, SUBURBAN TRUST COMPANY, WESTBROOK TRUST CO., WILMINGTON TRUST COMPANY; THE BETTER BUSINESS BUREAU OF METROPOLITAN NEW YORK, INC., BETTER BUSINESS BUREAU OF WESTCHESTER COUNTY, BETTER BUSINESS BUREAU OF WESTERN NEW YORK, INC., NATIONAL BETTER BUSINESS BUREAU, INC.; THE BUFFALO COURIER-EXPRESS, INC., BULLETIN COMPANY, CALL-CHRONICLE NEWSPAPERS, INC., DAYTON NEWSPAPERS, INC., DOW JONES & COMPANY, INC., EASTON PUBLISHING CO., THE EVENING STAR NEWSPAPER COMPANY, LANDMARK COMMUNICATIONS, INC., NEW YORK NEWS, INC., THE NEW YORK TIMES COMPANY, INC., NEWSDAY, INC., THE NEWS-JOURNAL CO., NIAGARA FALLS GAZETTE, THE PLAIN DEALER, WESTCHESTER ROCKLAND NEWSPAPERS, INC., AND THE SUCCESSORS IN INTEREST TO THE WORLD JOURNAL TRIBUNE,

Defendants.

CIVIL ACTION
NO.
70 CIV. [illegible]

COMPLAINT --
CLASS ACTIONS

Plaintiffs, by their attorney, Carl E. Person, as and for their complaint, respectfully allege:

COUNT ONE

(RESTRAINT OF TRADE)

Jurisdiction

1. The jurisdiction of this Court to hear this Complaint is based upon the original jurisdiction of this Court to hear "any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies", and, as hereinafter set forth, this controversy involves Sections 1, 2 and 3 of the Sherman Act (15 U.S.C. Sections 1, 2 and 3); Sections 1, 2, 3, 4, 7, 12 and 16 of the Clayton Act (15 U.S.C. Sections 12, 13, 14, 15, 18, 22 and 26) and Sections 1337 and 1391 of the Judicial Code (28 U.S.C. Sections 1337 and 1391).

Venue

2. Each of the individual Defendants resides, is found or has an agent in the Southern District of New York; and each of the corporate Defendants maintains an office, transacts business or has an agent in the Southern District of New York, or is incorporated or licensed to do business in the State of New York and is either doing business or licensed to do business in the Southern District of New York.

3. The interstate trade and commerce described herein is carried on in part within the Southern District of New York. Many of the unlawful acts done pursuant to the combination and conspiracy alleged affect interstate commerce and have been performed within the Southern District of New York.

Class Action Allegations

4. The Plaintiffs claim that subdivisions (1)(A), (1)(B), (2) and, with the appropriate findings by the Court, subdivision (3) of Rule 23(b) of the Federal Rules of Civil Procedure make it proper for the Plaintiffs described in paragraphs 9-15 below (hereinafter collectively referred to as the "Class Plaintiffs") to maintain counts one through seven and nine through twenty-seven of this Complaint as class or sub-class actions on behalf of all franchisees (or sub-classes thereof) of Plaintiff Nabcor against the Defendants named in each of such counts, respectively.

5. The Plaintiffs claim that the following averments justify a finding that the Class Plaintiffs are entitled to maintain counts one through seven and nine through twenty-seven of this Complaint as class or sub-class actions on behalf of all Nabcor franchisees:

(i) There are approximately 200 Nabcor franchisees, consisting of approximately 9 Master Brokers, 31 Area Brokers and 160 Brokers.

(ii) A description of the members of each sub-class follows:

(a) Master Brokers - Franchisees of Nabcor, each licensed to sell 10 Area Broker franchises within the franchised territory, covering an average of approximately 1,000,000 in population, and to derive an override or royalty of 12½% of the $200 gross brokerage commission (approximately) on new and used automobile transactions, charged by each franchised Broker operating within such franchised territory of the Master Broker.

(b) Area Brokers - Franchisees of Nabcor and/or a Master Broker, each licensed to sell 10 Broker franchises within the franchised territory, covering an average of approximately 100,000 in population, and to derive an override or royalty of 25% of the $200 gross brokerage commission (approximately) on new and used automobile transactions, charged by each franchised Broker operating within such franchised territory of the Area Broker.

(c) Brokers - Franchisees of Nabcor and/or a Master Broker and/or an Area Broker, each licensed to act as a broker for persons desiring to purchase any make or model of new automobile of domestic manufacture, within the Area Broker's franchised territory, retaining 50% of the $200 gross brokerage commission (approximately), charged the customer on each new or used automobile transaction.

(iii) The Class Plaintiffs claim that they will fairly and adequately protect the interests of the class or their respective sub-classes on the basis that:

(a) Plaintiff Nabcor, as the franchisor, is most acquainted with the facts and issues in connection with the alleged conspiracy or combination to restrain trade in, or monopolize or attempt to monopolize commerce in new automobiles; and the alleged price or service discrimination against Nabcor and its franchisees.

(b) Plaintiff Nabcor, as the franchisor, has a substantial interest in maximizing any aggregate recovery from the Defendants in connection with the class action (or sub-class actions) and desires to assist the Class Plaintiffs and other Nabcor franchisees in recovering for injuries suffered by them, to strengthen the Nabcor distribution system.

(c) The allocation of any award or settlement among Nabcor and the members of the three sub-classes, to the extent any such award or settlement is based upon lost sales or market penetration for the entire Nabcor system, would probably be based on the percentages set forth in the Nabcor franchise agreements, which reduces the potential intra-class conflicts.

(d) Plaintiff Nabcor believes that none of the franchisees has the financial strength to maintain the class or sub-class actions by itself.

(e) Class Plaintiffs General Auto Sales & Leasing, Inc., Dale Strimpel and Nabcor of East New York, Inc., as members of the Master Broker sub-class, will fairly ensure the adequate representation of all 9 persons in this sub-class and Class Plaintiff Nabcor of East New York, Inc. has a stronger financial position than the average member of this sub-class; also, there are no interests among any members of this sub-class antagonistic to any interests of the three Class Plaintiffs who are bringing this sub-class action.

(f) Class Plaintiffs Robert B. Heim d/b/a Robert Heim Auto Sales and Courtesy Auto Brokers, as members of the Area Broker sub-class, will fairly ensure the adequate representation of all 31 persons (approximately) in this sub-class, and Class Plaintiff Robert B. Heim has a stronger financial position than the average member of this sub-class; also, there are no interests among any members of this sub-class antagonistic to any interests of the two Class Plaintiffs who are bringing this sub-class action.

(g) Class Plaintiffs Alfred J. Young, Sr. d/b/a A. J. Young Sr. Auto Sales and Louis H. Jamele d/b/a Lou's Auto Mart, as members of the Broker sub-class, will fairly ensure the adequate representation of all 160 persons (approximately) in this sub-class, and Class Plaintiff Louis Jamele has a stronger financial position than the average member of this sub-class; also, there are no interests among any members of this sub-class antagonistic to any interests of the two Class Plaintiffs who are bringing this sub-class action.

(iv) The following questions of law or fact are claimed to be common to the three sub-classes:

(a) Whether there exists an unlawful conspiracy or combination among the Defendants and Co-Conspirators named in this count one to restrain trade, and whether there exists any unlawful monopoly or attempt to monopolize commerce in the retail distribution of new automobiles.

(b) Whether any of the Defendants are legally responsible for any anti-trust violations which may be proved to have occurred.

(c) Whether the involuntary advertising contributions paid by Nabcor and its franchisees indirectly to the Defendant Manufacturers (defined hereafter) for subsequent payment to and use by cooperative advertising organizations, formed for the benefit of franchised new automobile dealers, is an unlawful discrimination in price or services.

(d) Whether the unavailability of Defendant Manufacturers' automobile financing, insurance and rebates to Nabcor and its franchisees, or their customers, is an unlawful discrimination in price or services, when they are made available to Defendant Manufacturers' franchised dealers, fleet purchasers and their customers, respectively.

(e) Whether the unavailability of Defendant Manufacturers' new automobile warranty program (covering service and parts) for administration by Nabcor and its franchisees for the benefit of their customers is an unlawful price or service discrimination when such program is made available to Defendant Manufacturers' franchised dealers and fleet purchasers.

(f) Whether benefits of the Defendant Manufacturers' fleet purchase programs should be made available to Nabcor and its franchisees.

(g) How any damages are to be calculated; whether an assumed percentage of market penetration by Nabcor and its franchisees may be proven, and if so, the size of the market and the percentage of market penetration to be assumed.

(v) The foregoing actions are claimed to be maintainable by the Class Plaintiffs as class or sub-class actions under subdivision (b)(3) of Rule 23 of the Federal Rules of Civil Procedure; and the Class Plaintiffs claim that the following averments support the findings required by said subdivision (b)(3):

(A) The issues being raised in counts one through seven and ten through seventeen are of such great complexity and magnitude, with a substantial amount of essential information being unknown to any of the Plaintiffs other than Nabcor and its principals, Frank Maiorana and Anthony Maiorana, that it is unlikely that any members of the class or three sub-classes of Nabcor franchisees would be interested in individually controlling the prosecution of any separate actions. This is so particularly because Nabcor has the greatest interest in restoring each of the franchisee class members to the level of profitability they should have attained had there been no antitrust violations as claimed in this Complaint.

(B) No litigation concerning the controversy has been commenced previously by members of the franchisee class or sub-classes, except that 9 franchisees (none of whom is a Class Plaintiff herein) are suing Nabcor and, in some instances, Frank Maiorana, in 8 separate lawsuits in 4 states for recovery of moneys paid by them for their franchises and for other damages. The defense of these suits may raise matters similar to some of the matters to be covered by the within class actions in counts one through seven.

(C) It is desirable to concentrate the litigation of claims in this Court because of (i) the substantial number of named persons alleged to have conspired or combined against the Plaintiffs, a majority of which named persons appear to be subject to the jurisdiction of this Court; and (ii) the economic advisability of determining the rights of, and any damages to, the Plaintiffs and other class members in a single action.

(D) The difficulties likely to be encountered in the management of the class actions being brought in counts one through seven and nine through seventeen of this Complaint do not appear to be material inasmuch as Nabcor, the franchisor of each member of the class or three sub-classes of franchisees, is also a party to these actions and can be a unifying force. Nabcor, as the franchisor, is the natural leader of the class of franchisees; the Class Plaintiffs have knowledge of specific claimed antitrust violations; because of their combined financial interest and specific information, the Class Plaintiffs as a group are in a better position to manage the class actions than any other group of plaintiffs.

Plaintiffs

6. Plaintiff NATIONAL AUTO BROKERS CORP. (hereinafter "Nabcor") is a Pennsylvania corporation having its principal place of business in Jenkintown, Pennsylvania, and is qualified to do business in the State of New York. Beginning in 1966 and continuously through the date of this Complaint, Nabcor has been engaged in the business of selling any make and model of General Motors, Ford, Chrysler and American Motors new automobiles at discount retail prices, and has been franchising other persons to act as brokers for consumers

desiring to purchase any such new automobiles at a substantial discount from the markup typically charged by factory-franchised new automobile dealers.

7. Plaintiff FRANK MAIORANA, the President and a principal shareholder of Nabcor, resides in Warminster, Pennsylvania. Frank Maiorana commenced the Nabcor business as a sole proprietorship in 1965, and in 1966 transferred all of the operations and assets to Nabcor as a capital contribution.

8. Plaintiff ANTHONY MAIORANA, Vice President and a principal shareholder of Nabcor, resides in Philadelphia, Pennsylvania.

9. Plaintiff COURTESY AUTO BROKERS is a partnership which had its principal place of business in Huntington Station, New York. During February, 1968 Plaintiff Courtesy Auto Brokers purchased an Area Broker franchise from Nabcor, and conducted its franchised business operations continuously thereafter until it ceased operations in December, 1968.

10. Plaintiff GENERAL AUTO SALES & LEASING, INC. is a New York corporation which had its principal place of business in Lancaster, New York until it ceased operations in July, 1970. During August, 1967, Plaintiff General Auto Sales & Leasing, Inc. purchased a Master Broker franchise from Nabcor, and conducted its franchised business operations continuously thereafter until it ceased operations in July, 1970.

11. Plaintiff DALE STRIMPEL, who resides in Alden, New York, is the sole owner of the stock of Plaintiff General Auto Sales & Leasing, Inc., and was its President during all periods covered by this Complaint.

12. Plaintiff ROBERT B. HEIM, who resides in Bethlehem, Pennsylvania, was doing business as Robert Heim Auto Sales in Bethlehem, Pennsylvania until he ceased operations in March, 1970. During May, 1969, Plaintiff Robert Heim purchased an Area Broker franchise from Nabcor, and conducted his franchised business operations continuously thereafter until he ceased operations in March, 1970.

13. Plaintiff LOUIS H. JAMELE, who resides in Middlebury, Connecticut, is doing business as Lou's Auto Mart in Middlebury and Waterbury, Connecticut. During September, 1966, Plaintiff Louis H. Jamele purchased a Broker franchise from Nabcor, and has conducted his franchised business operations continuously thereafter through the date of this Complaint.

14. Plaintiff NABCOR OF EAST NEW YORK, INC. is a New York corporation having its principal place of business in Yonkers, New York. During March, 1966, Plaintiff Nabcor of East New York, Inc., under its former name Turco Auto Sales and Leasing Corp., purchased a Master Broker franchise from Nabcor, and has conducted its franchised business operations continuously thereafter through the date of this Complaint.

15. Plaintiff ALFRED J. YOUNG, SR., who resides in Watertown, New York, is doing business as A. J. Young, Sr. Auto Sales in Watertown, New York. During May, 1967, Plaintiff Alfred J. Young, Sr. purchased a Broker franchise from Nabcor, and has conducted his franchised business continuously thereafter through the date of this Complaint.

16. The Plaintiffs have purchased more than 1,000 new automobiles from franchised dealers of General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation from the latter part of 1966 to the date of this Complaint; and Frank Maiorana and Anthony Maiorana, brothers and principal shareholders of Nabcor, have an aggregate of 42 years of experience in a variety of phases of the automobile business.

Defendants

Name of Defendant	Category of Defendant	State of Incorporation	Basis for Venue
17. General Motors Corporation ("GM" or "General Motors")	Mfr.	Del.	Principal Place of Business
18. Frederick G. Donner	Mfr.-Officer	-	Found or Residence
19. James P. Roche	Mfr.-Officer	-	Found or Residence
20. Ford Motor Company ("Ford")	Mfr.	Del.	Principal Place of Business
21. Henry Ford, II	Mfr.-Officer	-	Found or Residence
22. Lee Iacocca	Mfr.-Officer	-	Found or Residence
23. Semon E. Knudsen	Mfr.-Officer	-	Found or Residence
24. Bob Bain Chevrolet	Franchised Dlr	NY	Licensed or Transacts Business
25. Bano Buick, Inc.	Franchised Dlr	NY	Principal Place of Business
26. Bates Pontiac Corp.	Franchised Dlr	NY	Principal Place of Business
27. Paul Batt Buick, Inc.	Franchised Dlr	NY	Licensed or Transacts Business
28. Glen Campbell Chevrolet, Inc.	Franchised Dlr	NY	Licensed or Transacts Business
29. Curry Chevrolet, Inc.	Franchised Dlr	NY	Principal Place of Business

Name of Defendant	Category of Defendant	State of Incorporation	Basis for Venue
30. Kem Dengler Chevrolet-Oldsmobile, Inc.	Franchised Dlr	NY	Licensed or Transacts Business
31. Gotham Ford, Inc.	Franchised Dlr	NY	Principal Place of Business
32. Grand Ford, Inc.	Franchised Dlr	NY	Principal Place of Business
33. Hallman Central Chevrolet Co., Inc.	Franchised Dlr	NY	Licensed or Transacts Business
34. Hamister-Gillogly Chevrolet, Inc.	Franchised Dlr	NY	Licensed or Transacts Business
35. Luby Chevrolet, Inc.	Franchised Dlr	NY	Principal Place of Business
36. Mark Buick Corp.	Franchised Dlr	NY	Principal Place of Business
37. Al Maroone Ford, Inc.	Franchised Dlr	NY	Licensed or Transacts Business
38. Marty Motors Corporation	Franchised Dlr	NY	Principal Place of Business
39. Midtown Chevrolet, Inc.	Franchised Dlr	NY	Principal Place of Business
40. Paragon Oldsmobile, Inc.	Franchised Dlr	NY	Principal Place of Business
41. Robin Ford Sales, Inc.	Franchised Dlr	NY	Principal Place of Business
42. Ruckle Pontiac Co., Inc.	Franchised Dlr	NY	Principal Place of Business
43. Rusher Ford Sales, Inc.	Franchised Dlr	NY	Licensed or Transacts Business
44. Semmes Ford Inc.	Franchised Dlr	NY	Principal Place of Business
45. Yonkers Ford, Inc.	Franchised Dlr	NY	Principal Place of Business
46. Niagara Frontier Automobile Dealers Association, Inc.	Auto Dlr Assoc.	NY	Licensed or Transacts Business

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Name of Defendant	Category of Defendant	State of Incorporation	Basis for Venue
47. Associates Discount Corporation of Delaware, Inc.	Financial Inst.	Del.	Doing Business
48. Bank of Delaware	Financial Inst.	Del.	Transacts Business
49. C.I.T. Financial Corporation	Financial Inst.	Del.	Principal Place of Business
50. Citizens Bank & Trust Co.	Financial Inst.	Md.	Transacts Business
51. Commercial Credit Corp.	Financial Inst.	Unknown	Principal Place of Business or Doing Business
52. County Trust Company	Financial Inst.	NY	Principal Place of Business
53. First National City Bank	Financial Inst.	NY	Principal Place of Business
54. General Motors Acceptance Corporation	Financial Inst.	Del.	Principal Place of Business or Doing Business
55. Suburban Trust Company	Financial Inst.	Md.	Transacts Business
56. Westbrook Trust Co.	Financial Inst.	Maine	Transacts Business
57. Wilmington Trust Company	Financial Inst.	Del.	Transacts Business
58. The Better Business Bureau of Metropolitan New York, Inc.	Better Business Bureau	NY	Principal Place of Business
59. Better Business Bureau of Westchester County	Better Business Bureau	NY	Principal Place of Business
60. Better Business Bureau of Western New York, Inc.	Better Business Bureau	NY	Licensed or Transacts Business
61. National Better Business Bureau, Inc.	Better Business Bureau	NY	Principal Place of Business

Name of Defendant	Category of Defendant	State of Incorporation	Basis for Venue
62. Buffalo Courier-Express, Inc.	Newspaper	NY	Licensed, Transacts Business or Agent
63. Bulletin Company	Newspaper	Pa.	Transacts Business or Agent
64. Call-Chronicle Newspapers, Inc.	Newspaper	Pa.	Transacts Business or Agent
65. Dayton Newspapers, Inc.	Newspaper	Ohio	Transacts Business or Agent
66. Dow Jones & Company, Inc.	Newspaper	NY	Principal Place of Business
67. Easton Publishing Co.	Newspaper	Pa.	Transacts Business or Agent
68. The Evening Star Newspaper Company	Newspaper	Unknown	Transacts Business or Agent
69. Landmark Communications, Inc.	Newspaper	Va.	Transacts Business or Agent
70. New York News, Inc.	Newspaper	NY	Principal Place of Business
71. The New York Times Company, Inc.	Newspaper	NY	Principal Place of Business
72. Newsday, Inc.	Newspaper	NY	Licensed, Transacts Business or Agent
73. News-Journal Co.	Newspaper	Del.	Transacts Business or Agent
74. Niagara Falls Gazette	Newspaper	NY	Licensed, Transacts Business or Agent
75. The Plain Dealer	Newspaper	Ohio	Transacts Business or Agent
76. Westchester Rockland Newspapers, Inc.	Newspaper	NY	Principal Place of Business
77. The Successors in interest to the World Journal Tribune	Newspaper	-	Doing Business; Transacts Business or Licensed; Found or Residence

78-88 Omitted.

Co-Conspirators

89. Various persons (including partnerships, corporations and associations) who are not made Defendants in this action participated

as co-conspirators in the illegal activities charged herein and performed acts and made statements in furtherance thereof. Some of such co-conspirators were and/or are officers, directors, employees or agents of the Defendant corporations.

90. The following persons are named as Co-Conspirators with the Defendants:

Co-Conspirator	Category of Co-Conspirator	(Place of Employment or) Principal Place of Business
John V. Cusick	Motor Vehicle Dept.-Officer	(Cal.)
John J. Tynan	Motor Vehicle Dept.-Officer	(Conn.)
Edward T. Ryan	Motor Vehicle Dept.-Officer	(Conn.)
John Hanlon	Motor Vehicle Dept.-Officer	(Conn.)
Capitol Motors, Incorporated	Franchised Dealer	Conn.
Crestwood Ford	Franchised Dealer	Conn.
Lochman Chevrolet	Franchised Dealer	Conn.
Moriarty Brothers, Inc.	Franchised Dealer	Conn.
Nathan Hale Buick	Franchised Dealer	Conn.
New Britain Buick	Franchised Dealer	Conn.
Ranger Chevrolet	Franchised Dealer	Conn.
Connecticut Automotive Trades Association, Inc.	Dealer Association	Conn.
Resolute Insurance Co.	Financial Inst.	Conn.
Louis Morganstern	Financial Inst. and Franchised Dealer - Officer	(Conn.)
Diver Chevrolet	Franchised Dealer	Del.
Rock Hill Pontiac	Franchised Dealer	Del.
Union Park Pontiac	Franchised Dealer	Del.

Co-Conspirator	Category of Co-Conspirator	(Place of Employment or) Principal Place of Business
Delaware Automobile Dealers Association	Dealers Association	Del.
Better Business Bureau of Delaware	Better Business Bureau	Del.
M. P. Tomlinson Co.	Franchised Dealer	Fla.
Harry B. Center Dodge-Cadillac	Franchised Dealer	Maine
Harry B. Center	Franchised Dealer - Officer	(Maine)
Canal National Bank	Financial Inst.	Maine
American National Bank	Financial Inst.	Md.
Maryland National Bank	Financial Inst.	Md.
Tom Brennan	Motor Vehicle Dept.- Officer	(N. J.)
A. C. Chevrolet	Franchised Dealer	N. J.
Cerota Chevrolet-Oldsmobile	Franchised Dealer	N. J.
Chief Pontiac, Inc.	Franchised Dealer	N. J.
Dave Cole Pontiac	Franchised Dealer	N. J.
Countryside Ford	Franchised Dealer	N. J.
Walter H. Kollmar Pontiac	Franchised Dealer	N. J.
Krause Oldsmobile	Franchised Dealer	N. J.
Randolph Chevrolet	Franchised Dealer	N. J.
Rohrer Chevrolet	Franchised Dealer	N. J.
Village Ford	Franchised Dealer	N. J.
New Jersey Auto Dealers Association	Dealers Association	N. J.
New Jersey Bank, N.A.	Financial Inst.	N. J.
Robert Dillon	Franchised Dealer - Officer	(N. Y.)
Mr. C. E. Sherman	Motor Vehicle Dept.- Officer	(Ohio)
Dayton Area Automobile Dealers Association	Dealers Association	Ohio
Mr. Rieger	Dealers Association-President	(Ohio)
Better Business Bureau of Cincinatti	Better Business Bureau	Ohio

Co-Conspirator	Category of Co-Conspirator	(Place of Employment or) Principal Place of Business
Better Business Bureau of Cleveland	Better Business Bureau	Ohio
Better Business Bureau of Dayton	Better Business Bureau	Ohio
Block Pontiac	Franchised Dealer	Penn.
C & C Motors, Inc.	Franchised Dealer	Penn.
Chestnut Motors, Inc.	Franchised Dealer	Penn.
Circle Ford	Franchised Dealer	Penn.
Degnan Chevrolet	Franchised Dealer	Penn.
Henry Faulkner, Inc.	Franchised Dealer	Penn.
Housenick Motor Co.	Franchised Dealer	Penn.
Koelle-Greenwood Ford	Franchised Dealer	Penn.
Kutner Buick	Franchised Dealer	Penn.
Lake & Co., Inc.	Franchised Dealer	Penn.
Norton Chevrolet	Franchised Dealer	Penn.
Roger Pensky Chevrolet	Franchised Dealer	Penn.
Pitcairn Oldsmobile	Franchised Dealer	Penn.
Pollino Buick-Pontiac, Inc.	Franchised Dealer	Penn.
Reading Ford	Franchised Dealer	Penn.
Royal Ford	Franchised Dealer	Penn.
Matt Slap Chevrolet	Franchised Dealer	Penn.
Ray Swenson, Inc.	Franchised Dealer	Penn.
Tauder Ford, Inc.	Franchised Dealer	Penn.
Rudy Valentino Ford	Franchised Dealer	Penn.
John B. White Ford	Franchised Dealer	Penn.
Al Wilson Pontiac	Franchised Dealer	Penn.
Wolfington Chevrolet	Franchised Dealer	Penn.
Mellon National Bank & Trust Co.	Financial Inst.	Penn.
Philadelphia National Bank	Financial Inst.	Penn.
Union National Bank	Financial Inst.	Penn.

The Co-Conspirators designated above as Franchised Dealers are in competition with Nabcor and/or one or more of Nabcor's franchisees.

Definitions

91. Each reference in this count one to a category of Defendants (such as "Defendant Dealers" and "Defendant Newspapers") shall be defined by reference to the Defendants named in paragraphs 17-77 and falling in the designated category. Accordingly, "Defendant Dealers" is defined as the "Franchised Dealers" listed in paragraphs 24-45 and the "Defendant Newspapers" is defined as the "Newspapers" listed in paragraphs 62-77 under this count one. All of the Defendants listed in paragraphs 17-77 of this Complaint shall hereinafter be referred to collectively as the "Conspiracy Defendants".

92. Each reference in this count one to a category of Co-Conspirators shall be defined by reference to the Co-Conspirators named in paragraph 90 and falling in the designated category, together with any other such Co-Conspirators who may exist but are not named in this count one.

93. The term "warranty" as used in this Complaint shall mean the obligation by express or implied agreement or otherwise of General Motors Corporation, Ford Motor Company, Chrysler Corporation or American Motors Corporation to indemnify any purchasers of new automobiles against the costs of repairs or to provide the needed repairs (including labor and factory-authorized parts) relating to automobile defects reported to the automobile manufacturer or one of its authorized agents during a limited period

subsequent to purchase. For 1970-71 models of new automobiles the minimum period is 1 year or 12,000 miles for the warranties of the 4 automobile manufacturers named above.

94. The term "warranty work" as used in this Complaint shall mean repairs (including labor and factory-authorized parts) covered by a manufacturer's warranty and performed by or through a factory-authorized person.

95. The term "warranty program" as used in this Complaint shall mean the plan under which an automobile manufacturer authorizes and compensates a person (typically a factory-franchised dealer) for performing warranty work.

96. The term "leasing companies" as used in this Complaint shall mean all persons who lease or sell new automobiles to businesses or individual consumers, using various methods of financing including long or short term leases, sales and leaseback agreements, leases with options to purchase, which new automobiles were purchased for such resale under a "fleet program" (defined below) using a "fleet certificate number" (also defined below).

97. The term "fleet program" as used in this Complaint shall mean the system or plan under which annual purchasers (including leasing companies) of approximately 10 or more new automobiles of any one or more makes are granted a number (hereinafter "fleet certificate number") by one or more of the four automobile manufacturers licensing the holder of the fleet certificate number to purchase new automobiles in any quantities through sales subsidiaries or franchised dealers of the licensing automobile manufacturers.

98. The terms "competitors" and "competition" of Nabcor and/or its franchisees, as used in this Complaint, shall include factory-franchised dealers, fleet purchasers, leasing companies and manufacturers' sales subsidiaries whenever the context will permit.

99. The term "franchised dealers" as used in this Complaint shall include, unless the context requires otherwise, dealerships or sales corporations owned, financed or controlled by the manufacturer-franchisor.

100. The term "new automobiles" as used in this Complaint shall mean automobiles of the types currently being manufactured which are to be, or have been, purchased for resale by dealers of any kind (including Nabcor, its franchisees, leasing companies, sales subsidiaries of manufacturers, fleet purchasers and factory-franchised dealers) and have not been resold for the first time to an ultimate consumer or user.

Trade and Commerce Involved

101. Defendants General Motors and Ford manufactured approximately 78% of the 9,300,000 automobiles manufactured in the United States during the 1969 automobile model year, and distributed most of these new automobiles through a network of approximately 12,000 General Motors and 7,000 Ford franchised dealers located in every State of the United States and in the District of Columbia. Chrysler Corporation has approximately 6,000 franchised dealers and American Motors Corporation has approximately 2,000 franchised dealers. These franchised dealers resell the new automobiles to consumers and, in some instances, to other dealers (including franchised dealers, leasing companies, fleet purchasers and Nabcor) for resale.

102. Nabcor, a dealer in new and used automobiles, is not franchised to sell new automobiles by any automobile manufacturer. During the period commencing with its inception in 1966 and ending at the date of this Complaint, Nabcor, and its franchisees have established a network of franchised automobile brokers by selling or granting approximately 200 franchises (of which approximately 70 are still active) in an aggregate of 14 states and the District of Columbia. During this same period, Nabcor and its franchisees have purchased from franchised dealers (including some of the Defendant Dealers and some of the Co-Conspirator Dealers) for resale to the public in such 14 states and the District of Columbia more than 1,000 new automobiles. Plaintiff Nabcor and its franchisees believe themselves to be the largest organization for the retail distribution of new automobiles in the United States (excluding leasing companies) which is not franchised by an automobile manufacturer.

103. Thus, Plaintiff Nabcor and its franchisees are an integral part of the substantial flow in interstate commerce of new automobiles, from the various states of manufacture and assembly to the various states in which Nabcor's customers, the ultimate consumers, reside.

Background of the Conspiracy or Combination

104. Franchised automobile dealers, dominated by manufacturer-franchisors, are often required by the franchisor to make substantial capital investments and further investments as an actual or threatened condition to obtaining or renewing the dealer franchise. A particular dealer franchise may be a valuable right, to be fought over at times by competing applicants, because of the territorial protection given to the franchised dealer for resale

of a specific line of new automobiles, such as the Ford, Chevrolet or Cadillac line.

105. The franchised dealer is often required by the franchisor to spend a significant part of this substantial investment to establish suitable repair facilities, for performing warranty work and other factory-authorized repair work on the automobiles after they have been purchased by consumers. Ordinarily, such repair work by the dealer's service department is not as profitable as his business of selling new and used automobiles. Not infrequently, the franchised dealer is pleased if the service department merely covers its out-of-pocket expenses, without any contribution to overhead.

106. Into this manufacturer-franchised dealer system enters Nabcor, an organization for the discount sale of new automobiles, attempting to establish a nationwide network of automobile brokers to compete with each and every one of the nation's 27,000 some odd franchised dealers, in every city and town in the United States.

107. Not having the high capital investment of a typical franchise dealership, as required by the automobile manufacturers, including the investment needed to provide suitable service facilities, the Nabcor organization was able to sell new automobiles of any make or model at a markup substantially discounted from the markup needed or desired by the franchised dealer. A comparatively high markup is needed by many of the franchised dealers on their sales of new automobiles to consumers to make up for the comparatively poor returns on their investments in service facilities.

108. The Nabcor organization customer, having purchased his new automobile at a discount price, returned to the franchised dealer (perhaps the dealer who had lost the sale to Nabcor) for

warranty work or other factory-authorized repair work, which the dealer was required to perform under his franchise agreement with the manufacturer-franchisor. The assumed value of any such warranty work is paid (or should be paid) to the franchised dealer by the manufacturer-franchisor, but apparently not in an amount sufficient to make the warranty work a very profitable or desirable form of business for the typical franchised dealer. The dealer may look upon warranty work as a necessary evil, to keep the dealer's own customers satisfied and encourage repeat or additional sales through such customers.

109. In light of these apparent difficulties for many franchised dealers, the unlawful conspiracy or combination developed, the Plaintiffs allege, to assist the franchised dealer in preserving the territorial exclusive of his franchise.

110. The owner of a successful franchised dealership, often being wealthier and more successful than many other businessmen in the locality, will frequently have economic power and influence in the community, extending to the (i) banks (where he may be on the Board of Directors or act as an advisor, or be a substantial depositor or borrower); (ii) newspapers (with whom he or his franchisor or dealer advertising association may be a substantial advertiser; (iii) better business bureaus (of which he may be one of the most influential members); or (iv) motor vehicle bureau (with the officials of which he may have a friendly, long-time relationship). It is not difficult to see how the owner of a franchised dealership, threatened with loss of sales to the Nabcor organization, may draw upon his influence or use his power to attempt to eliminate Nabcor and its franchisees as competitors.

In this regard, the automobile manufacturers and automobile dealer associations could become valuable allies.

Combination or Conspiracy in Restraint of Trade

111. As a first count of this Complaint, against the Conspiracy Defendants (defined in paragraph 91 above), Plaintiffs Nabcor, Frank Maiorana, Anthony Maiorana and the Class Plaintiffs (defined in paragraph 4 above), on behalf of themselves and all other Nabcor franchisees, allege that:

(A) Beginning in or about 1966, the exact date being unknown to the Plaintiffs, and continuing up to and including the date of the filing of this Complaint, the Conspiracy Defendants and Co-Conspirators, together with other persons unknown to the Plaintiffs, have and now are engaged in a continuing unlawful combination or conspiracy unreasonably to restrain or monopolize interstate trade and commerce in new automobiles of domestic manufacture, in violation of Section 1 of the Sherman Act.

(B) The aforesaid unlawful combination or conspiracy has consisted of a continuing agreement and concert of action among the Conspiracy Defendants and Co-Conspirators, the substantial terms and objects of which have included:

(1) Wilful participation by Defendant and Co-Conspirator Dealers, by:

(a) Reporting to General Motors and Ford specific new automobiles sold in their area through the Nabcor system, or the names of the purchasers; and requesting General Motors and Ford to eliminate this competition not franchised by General Motors or Ford. The information to be reported comes to the attention of the reporting persons by (i) new car salesmen who complain to their management about specific sales lost to the Nabcor system; (ii) Nabcor system advertising which offers to sell new automobiles of any domestic make or model at discount prices; or advertising to attract prospective purchasers of Nabcor franchises; and (iii) the appearance of Nabcor customers at the service centers operated by Defendant and Co-Conspirator Dealers, to obtain warranty work or other factory-authorized service for their automobiles.

(b) Complaining to state motor vehicle bureaus to encourage unlawful harrassment and interference by officials and employees thereof, including (i) actual and threatened arrest of Nabcor franchisees; and (ii) prohibiting or impeding registration of new automobiles sold through the Nabcor system.

(c) Meetings among themselves, sometimes in connection with meetings held by Defendant and Co-Conspirator Dealer Associations, to discuss Nabcor activities in their respective areas with a view toward protecting their common interests against the competition and consequent loss in sales to result from continuation of Nabcor's activities.

(d) Coercing or convincing Defendant and Co-Conspirator Newspapers and other media to refuse Nabcor advertising.

(e) Coercing or convincing franchised dealers not to continue supplying new automobiles to Nabcor.

(f) Urging or requesting Defendant and Co-Conspirator Better Business Bureaus to issue libelous, false and misleading reports and publications about Nabcor.

(g) Coercing or convincing Defendant and Co-Conspirator Financial Institutions to deny financing to Nabcor,.

its franchisees and their customers, under threat of withdrawal of the financing business of the Defendant and Co-Conspirator Dealers.

(h) Agreeing among themselves not to provide adequate automobile repair service and not to honor warranty claims of owners who purchased their automobiles through the Nabcor system, to create dissatisfaction among Nabcor customers and to destroy the business and reputation of Nabcor and its franchisees.

(2) Wilful participation by GM and Ford, by:

(a) Agreeing with their franchised Defendant and Co-Conspirator Dealers, who are Nabcor's competitors, to assist in eliminating Nabcor and its franchisees as competitors.

(b) Encouraging their franchised Defendant and Co-Conspirator Dealers and others to report Nabcor sales activities.

(c) Using their private records of new automobile serial numbers to identify factory-franchised suppliers of new automobiles to Nabcor.

(d) Having a sales zone or district where Nabcor is selling automobiles communicate with zones or districts in which franchised dealers are supplying Nabcor, to coerce or convince such supplying dealers not to continue dealing with Nabcor, under threat of loss of franchise or other benefits controlled by GM and Ford.

(e) Buying or otherwise acquiring formerly independent franchised dealers who were or would have been suppliers of new automobiles to Nabcor, and using their newly-acquired control over the new subsidiaries to shut off the source of supply to Nabcor.

(f) Using their control of factory-owned or factory-financed dealerships to cause the dealerships to influence other dealers to decide not to supply automobiles to Nabcor, and to assist in the elimination of Nabcor and its franchisees as competitors.

(g) Making it known to Defendant and Co-Conspirator Dealers and Dealer Associations that GM and Ford do not consider the Nabcor system a legitimate supplier of new automobiles to the public, for the purpose of influencing persons who otherwise would conduct business with Nabcor, its franchisees or their customers, under threat of loss of advantages derived from GM or Ford, including deposit balances in Defendant and Co-Conspirator Financial Institutions.

(h) Calling meetings of Defendant and Co-Conspirator Dealers Associations where discussions have taken place, in the presence of representatives of GM and Ford, on means of eliminating Nabcor and its franchisees as competitive factors; and by having such representatives suggest that the attending dealers bring pressure to bear upon local newspapers by pointing out how much advertising (using figures supplied by GM and Ford) the dealers were contributing to each newspaper and by threatening to withdraw their advertising.

(i) Cooperating with Defendant and Co-Conspirator Dealers who refuse to give the full benefit of the factory warranty to Nabcor's customers.

(j) Refusing to issue Nabcor fleet certificate numbers permitting volume purchases of new automobiles through any dealers franchised by GM or Ford.

(k) Advising or threatening franchised dealers not to supply or continue to supply new automobiles to Nabcor on the ground that Nabcor does not have a fleet certificate number; and refusing to supply new automobiles to any franchised dealer who intends to resell them to Nabcor.

(l) Refusing to make available to Nabcor financing, customer insurance and related benefits made available by GM and Ford to franchised dealers and fleet purchasers.

(m) Controlling and using advertising funds (a portion of which were contributed involuntarily by Nabcor, its franchisees or their customers) to influence Defendant and Co-Conspirator Newspapers and other media to reject advertising by Nabcor and its franchisees, and to publish articles or reports containing false or misleading information destructive of the business of Nabcor and its franchisees.

(n) Allowing a system to exist which has monopolistic control over the distribution of new automobiles and is used to eliminate or attempt to eliminate competitors such as Nabcor and its franchisees in the distribution of new automobiles.

(o) Using financial and political power to lobby successfully for enactment of state statutes, many of which should be declared unconstitutional under Federal Constitutional Law, which statutes enable GM and Ford to monopolize the distribution of new automobiles.

(3) Wilful participation by Defendant and Co-Conspirator Newspapers, by:

(a) Refusing to accept, or refusing to continue accepting, advertising by Nabcor and its franchisees.

(b) Attempting to justify such refusals with alleged complaints by Defendant and Co-Conspirator Dealers and Dealer Associations, and by false or misleading reports from Defendant and Co-Conspirator Better Business Bureaus, which reports were known or should have been known to be false and misleading.

(c) Attempting to justify such refusals on the ground that Nabcor does not have a dealer's franchise from GM or Ford.

(d) Publishing articles or reports containing false or misleading information destructive of the business of Nabcor and its franchisees.

(4) Wilful participation by Defendant and Co-Conspirator Better Business Bureaus, by:

(a) Naming to their automobile departments a person who is either affiliated with a franchised dealer or will protect the interests of franchised dealers when reviewing and determining the alleged acceptability of a newly-arrived competitor to do business in the community.

(b) Publishing false reports on Nabcor, with the intention of adversely affecting the business of Nabcor and its franchisees.

(c) Distributing such reports to newspapers including Defendant and Co-Conspirator Newspapers, for the purpose of having the newspapers reject Nabcor advertising and publish adverse statements about Nabcor.

(d) Distributing such reports under the Better Business Bureau name without advising the public that (i) the reports are false and misleading; (ii) the dealer franchise program of GM and Ford are substantially inferior in comparison to the Nabcor franchise program; (iii) the Defendant and Co-Conspirator Better Business Bureaus are not public agencies (and therefore are in violation of state statutes similar to Section 301(a)(8) of the New York Business Corporation Law, which prohibits the use of a name which misleads the public into believing that the corporation is a government agency or instrumentality); (iv) Better Business Bureaus are in fact a business opportunity for the persons controlling them; (v) local Better Business Bureaus are franchised by the National Better Business Bureau, which derives income from a portion of the revenues of the local Better Business Bureaus; and (vi) the approximately 27,000 franchised new automobile dealers in the United States are contributing an estimated $3-5,000,000 each year to support the Better Business Bureaus on a nationwide basis.

(5) Wilful participation by Defendant and Co-Conspirator Financial Institutions, by:

(a) Refusing to make financing available to Nabcor, its franchisees and their customers.

(b) Refusing business and personal loans to individuals who desire to buy a Nabcor franchise, as the sole basis for such refusal.

(c) Refusing automobile loans to potential Nabcor customers unless they make their contemplated purchases from a franchised dealer.

(d) Advising or convincing potential Nabcor customers not to purchase from Nabcor or its franchisees, but to purchase new automobiles from franchised dealers instead.

(e) Falsely describing the Nabcor system as "illegitimate" and "bootleg or gypsy operation", which injured the business of Nabcor and its franchisees and resulted in a loss of business for the Nabcor system, including the loss of potential franchisees.

(f) Having franchised automobile dealers or affiliates thereof as members of the Board of Directors or Advisory Boards, and permitting them to decide on the merits of financing proposals submitted by their competitors, including Nabcor, and potential customers of franchisees of Nabcor.

(6) Wilful participation by Defendant and Co-Conspirator Motor Vehicle Bureau Officials, acting outside of the scope of their authority as officials or employees of the state motor vehicle bureaus, and as undisclosed agents of Defendant and Co-Conspirator Dealers and Dealer Associations, by:

(a) Illegally arresting or threatening to arrest Nabcor franchisees and threatening to arrest prospective franchisees.

(b) Illegally forcing Nabcor franchisees to cease business operations.

(c) Harrassing customers of Nabcor and its franchisees by having the customers appear before the motor vehicle bureau to ascertain the serial numbers of their recently purchased new automobiles, under the pretext that the automobile may have been reported as stolen, but for the real purpose of assisting GM and Ford in identifying the franchised suppliers of such automobiles to Nabcor.

(d) Attending various meetings of Defendant and Co-Conspirator Dealer Associations to participate in discussions aimed at eliminating Nabcor and its franchisees as competitors of franchised dealers.

(e) Attempting to influence the motor vehicle bureaus of other states to cooperate in eliminating Nabcor and its franchisees as competitors of the franchised dealers.

(f) Refusing to register or deliberately delaying the registration of new automobiles sold through the Nabcor system.

(g) Refusing to accept the law of the land that new automobiles can be sold lawfully by others than franchised dealers, thereby unlawfully delegating the police powers of the state to GM, Ford and the other automobile manufacturers, by allowing them, in effect, by the grant or refusal of a franchise, to grant or deny business licenses to persons desiring to conduct a new automobile retail business in the state.

(7) Wilful participation by Defendant and Co-Conspirator Dealer Associations, by:

(a) Holding meetings of franchised dealers to discuss ways to eliminate Nabcor and its franchisees as competitors.

(b) Coercing or threatening Nabcor's factory-franchised suppliers of new automobiles for the purpose of having them cease doing business with Nabcor.

(c) Issuing bulletins urging all franchised dealer members not to supply automobiles to Nabcor or otherwise cooperate with Nabcor, its franchisees or their customers.

(d) Acting as a central agency to gather information about Nabcor to assist in eliminating Nabcor and its franchisees as competitors.

(e) Having member dealers solicit cooperation from other dealers and dealer associations, and from newspapers, financial institutions, better business bureaus and motor vehicle bureau officials, to assist in eliminating Nabcor and its franchisees as competitors.

112A. In furtherance of the conspiracy, combination, monopoly or attempt to monopolize alleged in paragraph 111 of this Complaint, and to attempt to eliminate Nabcor and its franchisees as competitors of franchised dealers in the distribution of new automobiles, specific activities of certain Conspiracy Defendants are alleged to have occurred, as follows:

(a) FREDERICK G. DONNER, Chairman of the Board of Defendant GM during the relevant portion of the 4-year period preceding the filing of this Complaint, played an active role in cutting off Nabcor's sources of supply of new GM automobiles during and after the time GM was held by the Supreme Court of the United States, in *U.S. v. General Motors Corp.*, 384 U.S. 127, 86 S. Ct. 1321 (1966), to be in violation of Section 1 of the Sherman Act by conspiring with franchised Chevrolet dealers to put an end to sales of new Chevrolet automobiles through discount houses; established GM's policy of attempting to eliminate Nabcor and its franchisees as competitors of GM's franchised dealers; and in December, 1966 attempted to dissuade an employee of Defendant Midtown Chevrolet, Inc. (then having the name Don Allen Chevrolet, Inc.) from accepting a position with Nabcor by making libelous and otherwise derogatory remarks to the employee about Nabcor.

(b) JAMES P. ROCHE, President or Chairman of the Board of Defendant GM during the 4-year period preceding the filing of this Complaint, played an active role in cutting off Nabcor's sources of supply of new GM automobiles at such time when GM was subject to the decision described in subparagraph (a) above, and in the Supreme Court's decision was specifically implicated as an active participant; continued GM's policy of attempting to eliminate Nabcor and its franchisees as competitors of GM's franchised dealers; and in December, 1967 the Assistant to James P. Roche claiming and appearing to act on his behalf (i) failed to comply with Nabcor's repeated demands that GM's employees at the zone level be ordered to cease cutting off Nabcor's sources of supply of new GM automobiles; and (ii) failed to have GM issue to Nabcor a fleet certificate number which the Assistant promised to Nabcor.

(c) HENRY FORD, II, Chairman of the Board of Defendant Ford during the 4-year period preceding the filing of this Complaint, established Ford's policy of attempting to eliminate Nabcor and its franchisees as competitors of Ford's franchised dealers; and played an active role in cutting off Nabcor's sources of supply of new Ford automobiles.

(d) LEE IACOCCA, General Manager of the Ford Division and/or President of Ford's North American operations during the

4-year period preceding the filing of this Complaint, implemented Ford's policy of attempting to eliminate Nabcor and its franchisees as competitors of Ford's franchised dealers; and played an active role in cutting off Nabcor's sources of supply of new Ford automobiles.

(e) SEMON E. KNUDSEN, President of Defendant Ford during the relevant portion of the 4-year period preceding the filing of this Complaint, implemented Ford's policy of attempting to eliminate Nabcor and its franchisees as competitors of Ford's franchised dealers; and played an active role in cutting off Nabcor's sources of supply of new Ford automobiles.

(f) In 1968, BOB BAIN CHEVROLET, having agreed to supply new automobiles to Nabcor at fleet prices, unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this new source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(g) In 1969-70, BANO BUICK, INC., from whom Nabcor and its franchisees had been purchasing new automobiles at fleet prices, unlawfully conspired or combined with Defendants GM and Mark Buick and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this source of supply of new automobiles to Nabcor and its franchisees, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(h) In 1967, BATES PONTIAC, CORP., from whom Nabcor had been purchasing new automobiles at fleet prices, unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(i) In 1968, PAUL BATT BUICK, INC., from whom Class Plaintiff General Auto Sales & Leasing, Inc., one of Nabcor's franchisees, had been purchasing new automobiles at fleet prices, unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this source of supply of new automobiles to Nabcor's franchisee; prevent delivery of a new Buick sold by the Nabcor franchisee to one of its customers; and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(j) In 1967-68, GLEN CAMPBELL CHEVROLET, INC. unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off Nabcor's sources of supply of new automobiles; to make false and misleading statements to a customer of Class Plaintiff General Auto Sales & Leasing, Inc., a Nabcor franchisee, and others to deprive Nabcor's franchisee of a sale, and to otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(k) In 1967-68, HAMISTER-GILLOGLY CHEVROLET, INC., unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off Nabcor's source of supply of new automobiles; to make false and misleading statements to a customer of Class Plaintiff General Auto Sales & Leasing, Inc., a Nabcor franchisee, and others to deprive Nabcor's franchisee of a sale; to convert Nabcor's customer to a customer of itself, and to otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(l) In 1966-67, CURRY CHEVROLET, INC., having agreed to supply new automobiles to Nabcor at fleet prices, unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this new source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(m) In 1967, KEM DENGLER-CHEVROLET OLDSMOBILE, INC., having agreed to supply new automobiles to a franchisee of Nabcor, at fleet prices, unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this new source of supply of new automobiles to the Nabcor franchisee, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(n) In 1967, GOTHAM FORD, INC., owned by Defendant Ford and having agreed to supply new automobiles to Nabcor at fleet prices, unlawfully conspired and combined with Defendant Ford and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this new source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(o) In 1967, GRAND FORD, INC., having agreed to supply new automobiles at fleet prices, unlawfully conspired and combined with Defendant Ford and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this new source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(p) In 1967, HALLMAN CENTRAL CHEVROLET CO., INC., having agreed to supply new automobiles at fleet prices to a franchisee of Nabcor, unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off the sources of supply of new automobiles to Nabcor's franchisee, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(q) In 1967, LUBY CHEVROLET CO., INC., from whom Nabcor had been purchasing new automobiles at fleet prices, unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(r) In 1969-70, MARK BUICK CORP., unlawfully conspired and combined with Defendants GM and Bano Buick and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off Defendant Bano Buick as a source of supply of new automobiles to Class Plaintiff Nabcor of East New York, Inc., one of Nabcor's franchisees, to refuse to perform warranty work for a customer of Nabcor's franchisee, and to otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(s) In 1967-68, AL MAROONE FORD, INC., having agreed to supply new automobiles at fleet prices to General Auto Sales & Leasing, Inc., a Nabcor franchisee, unlawfully conspired or combined with Defendant Ford and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this new source of supply of new automobiles to Nabcor's franchisee, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(t) In 1970, MARTY MOTORS CORPORATION, from whom Nabcor had been purchasing new automobiles at fleet prices, unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(u) In 1966-67, MIDTOWN CHEVROLET, INC., from whom Nabcor had been purchasing new automobiles at fleet prices, unlawfully conspired and combined with, and sold out to, Defendant GM, and conspired or combined with other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(v) In 1967, PARAGON OLDSMOBILE, INC., having agreed to supply new automobiles at fleet prices to Nabcor, unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this new source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(w) In 1967, ROBIN FORD SALES, INC., having agreed to supply new automobiles at fleet prices to Nabcor, unlawfully conspired or combined with Defendant Ford and other Defendants and

Co-Conspirators unknown to Plaintiffs to cut off this new source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(x) In 1967, RUCKLE PONTIAC CO., INC., from whom Nabcor had been purchasing new automobiles at fleet prices, unlawfully conspired or combined with Defendant GM and Co-Conspirator Robert Dillon and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this source of supply of new automobiles to Nabcor; and through Robert Dillon, a principal owner of Defendant Ruckle Pontiac Co., Inc., to attempt to have Ernest L. Turco, a principal in Class Plaintiff Nabcor of East New York, Inc., voted out of the local Chamber of Commerce; and to otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(y) Omitted.

(z) In 1967, RUSHER FORD SALES, INC. unlawfully conspired or combined with Defendant Ford and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off the source of supply of new automobiles to Class Plaintiff General Auto Sales & Leasing, Inc., one of Nabcor's franchisees, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(aa) In December of 1966, SEMMES FORD INC., having agreed to supply new automobiles at fleet prices to Nabcor, and having accepted 10 separate orders for new Fords from Nabcor, unlawfully conspired or combined with Defendant Ford and other Defendants and Co-Conspirators unknown to Plaintiffs to refuse delivery of the ordered automobiles and cut off this new source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(bb) In 1967, YONKERS FORD, INC., from whom Nabcor had been purchasing new automobiles at fleet prices, unlawfully conspired or combined with Defendant Ford and other Defendants and Co-Conspirators unknown to Plaintiffs to cut off this source of supply of new automobiles to Nabcor, and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees.

(cc) In 1967, NIAGARA FRONTIER AUTOMOBILE DEALERS ASSOCIATION, INC., the membership of which consisted of various Defendant and Co-Conspirator Dealers, held meetings at which Defendants and Co-Conspirators conspired or combined to cut off Nabcor's supply of new automobiles and otherwise assist in systematically destroying the business, good will and reputation of Nabcor and its franchisees, and issued a bulletin to its membership which, in the context of these meetings, invited or urged its members to join the conspiracy.

(dd) Omitted.

(ee) In 1966-69, ASSOCIATES DISCOUNT CORPORATION OF DELAWARE, INC. unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to Nabcor's customers, either directly or through Nabcor, for the purpose of eliminating Nabcor and its franchisees as competitors of the factory-franchised dealers who were obtaining automobile financing from Defendant Associates Discount Corporation of Delaware, Inc.

(ff) In 1970, BANK OF DELAWARE unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to customers of Nabcor Delaware Auto Brokers, Inc., a Nabcor franchisee, either directly or through the Nabcor franchisee, for the purpose of eliminating Nabcor and its franchisees as competitors of the factory-franchised dealers who were obtaining automobile financing from Defendant Bank of Delaware.

(gg) Omitted.

(hh) In 1966-67, C.I.T. FINANCIAL CORPORATION unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to Nabcor's customers through Nabcor, for the purpose of eliminating Nabcor and its franchisees as competitors of the factory-franchised dealers who were obtaining automobile financing from Defendant C.I.T. Financial Corporation.

(ii) In 1970, CITIZENS BANK & TRUST CO. OF MARYLAND unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to Nabcor's customers, either directly or through Nabcor, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers, including any such dealers who may have been obtaining automobile financing from Defendant Citizens Bank & Trust Co. of Maryland.

(jj) In 1966-68, COMMERCIAL CREDIT CORP. unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to Nabcor's customers, either directly or through Nabcor, for the purpose of eliminating Nabcor and its franchisees as competitors of the factory-franchised dealers who were obtaining automobile financing from Defendant Commercial Credit Corp.

(kk) In 1966-70, COUNTY TRUST CO. unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to customers of Nabcor and Nabcor of East New York, Inc., a Nabcor franchisee, either directly or through Nabcor or its franchisee, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were obtaining automobile financing from Defendant County Trust Co.

(ll) In 1966-67, FIRST NATIONAL CITY BANK unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to Nabcor's customers through Nabcor, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were obtaining automobile financing from Defendant First National City Bank.

(mm) In 1967-68, GENERAL MOTORS ACCEPTANCE CORPORATION unlawfully conspired or combined with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to Nabcor's customers, either directly or through Nabcor and deny to Defendant Matt Slap Chevrolet, Inc. the benefits of an automobile lease-financing program of Defendant General Motors

Acceptance Corporation solely because Defendant Matt Slap Chevrolet, Inc. intended to supply the leased automobiles to Nabcor, for the purpose of eliminating Nabcor and its franchisees as competitors of GM-franchised dealers who were obtaining automobile financing from Defendant General Motors Acceptance Corporation.

(nn) Omitted.

(oo) - (rr) Omitted.

(ss) In 1970, SUBURBAN TRUST COMPANY unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to customers of a Nabcor franchisee, either directly or through the Nabcor franchisee, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were obtaining automobile financing from Defendant Suburban Trust Company.

(tt) Omitted.

(uu) In 1968, WESTBROOK TRUST CO. unlawfully conspired or combined with Co-Conspirator Canal National Bank and various Defendants and Co-Conspirators unknown to Plaintiffs to deny a $5,000 personal loan to a prospective franchisee of Nabcor who was fully acceptable as a borrower to Defendant Westbrook Trust Co. except for his prospective relationship with Nabcor, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers, including any such dealers who may have been obtaining automobile financing from Defendant Westbrook Trust Co.

(vv) In 1970, WILMINGTON TRUST COMPANY unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to deny new automobile financing to customers of Nabcor Delaware Auto Brokers, Inc., a Nabcor franchisee, either directly or through the Nabcor franchisee, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were obtaining automobile financing from Defendant Wilmington Trust Company.

(ww) In 1968-69, BETTER BUSINESS BUREAU OF WESTCHESTER COUNTY unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to prevent Class Plaintiff Nabcor of East New York, Inc., one of Nabcor's franchisees, from becoming a member of Defendant Better Business Bureau of Westchester County, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were members of Defendant Better Business Bureau of Westchester County.

(xx) In 1967-68, BETTER BUSINESS BUREAU OF WESTERN NEW YORK, INC. unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to publish false and misleading statements about Nabcor and its franchisees, to prevent Class Plaintiff General Auto Sales & Leasing, Inc., one of Nabcor's franchisees, from becoming a member of Defendant Better Business Bureau of Western New York, Inc., and to prevent Class Plaintiff General Auto Sales & Leasing, Inc. from advertising in Defendant Newspapers Buffalo Courier-Express and Niagara Falls Gazette, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in the Defendant Newspapers.

(yy) In 1967-68, THE BUFFALO COURIER-EXPRESS, INC., publisher of the Buffalo-Courier Express, unlawfully conspired or combined with Defendant Better Business Bureau of Western New York, Inc. and other Defendants and Co-Conspirators unknown to Plaintiffs to prevent Class Plaintiff General Auto Sales & Leasing, Inc., one of Nabcor's franchisees, from advertising in the Buffalo Courier-Express, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in the Buffalo Courier-Express.

(zz) In 1970, BULLETIN COMPANY, publisher of the Evening Bulletin, a newspaper which had accepted advertising from Nabcor, unlawfully conspired or combined with Defendant GM and Co-Conspirator Kelly Ford (Norristown, Pennsylvania) and various Buick dealers and other Defendants and Co-Conspirators unknown to Plaintiffs to reject any further advertising by Nabcor, and to reject any advertising by Nabcor Northern Chester County, Inc., a Nabcor franchisee, in the Evening Bulletin, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in the Evening Bulletin.

(aaa) In 1969-70, CALL-CHRONICLE NEWSPAPERS, INC., publisher of the Allentown Call-Chronicle, a newspaper which had been accepting advertising from Class Plaintiff Robert B. Heim, one of Nabcor's franchisees, unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to reject any further advertising by Class Plaintiff Robert B. Heim, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in the Allentown Call-Chronicle.

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(bbb) In 1969, DAYTON NEWSPAPERS, INC., publisher of the Dayton News, unlawfully conspired or combined with Co-Conspirators Better Business Bureau of Dayton, C. E. Sherman (Chief of the Ohio Motor Vehicle Department), Dayton Area Automobile Dealers Association, and a Mr. Rieger, President of the Dayton Area Automobile Dealers Association, and with various Defendants and other Co-Conspirators unknown to Plaintiffs to prevent Nabcor from advertising in the Dayton News; and the Dayton News published an article libelling Nabcor by stating in substance that persons who bought Nabcor franchises would be cheated, and by stating in substance that fast action by the Ohio Motor Vehicle Bureau, and Co-Conspirators C. E. Sherman, Better Business Bureau of Dayton, Dayton Area Automobile Dealers Association and its President, a Mr. Rieger, stopped the outfit, which in context was referring to Nabcor, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers in the distribution of new automobiles.

(ccc) In 1968, DOW JONES & CO., INC., publisher of The Wall Street Journal, a newspaper which had accepted advertising from Nabcor and its franchisees, unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to reject any further advertising by Nabcor or its franchisees in The Wall Street Journal, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers and Defendant Manufacturers who were advertising in The Wall Street Journal.

(ddd) In 1969-70, EASTON PUBLISHING CO., publisher of the Easton Express, a newspaper which had been accepting advertising from Class Plaintiff Robert B. Heim, one of Nabcor's franchisees, unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to reject any further advertising by Class Plaintiff Robert B. Heim in the Easton Express, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in the Easton Express.

(eee) In 1969, THE EVENING STAR NEWSPAPER COMPANY, publisher of The Washington Evening Star, through its "action line", championed the cause of a complaining Nabcor customer and attempted to force GM to deliver the customer's automobile, but after conspiring or combining with Defendant GM and other Defendants and Co-Conspirators unknown to Plaintiffs, demanded that Nabcor give its customer his deposit back and advised the customer to buy the same type of new automobile from a factory-franchised dealer, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who, together with Defendant GM, were advertising in The Washington Evening Star.

(fff) In 1967, LANDMARK COMMUNICATIONS, INC., publisher of The Virginia Pilot and Ledger Star, unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to prevent Nabcor from advertising in The Virginia Pilot and Ledger Star unless the advertisement stated that Nabcor was a used car dealer, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in The Virginia Pilot and Ledger Star.

(ggg) In 1967, NEW YORK NEWS, INC., publisher of the Daily News, a newspaper which had been accepting advertising from Nabcor and its franchisees, unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to reject any further advertising by Nabcor or its franchisees, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in the Daily News.

(hhh) 1966-70, THE NEW YORK TIMES COMPANY, INC., publisher of The New York Times, a newspaper which had accepted advertising from Nabcor and its franchisees, unlawfully conspired or combined with Defendant Better Business Bureau of New York and other Defendants and Co-Conspirators unknown to Plaintiffs to reject any further advertising by Nabcor or its franchisees, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in The New York Times.

(iii) In 1966-67, NEWSDAY, INC., publisher of Newsday, a newspaper which had accepted advertising from Nabcor and its franchisees, unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to reject any further advertising by Nabcor or its franchisees, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in Newsday.

(jjj) In 1970, THE NEWS-JOURNAL CO., publisher of News-Journal, unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to prevent Nabcor and its franchisees from advertising in the News-Journal, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in the News-Journal.

(kkk) In 1967-68, NIAGARA FALLS GAZETTE, publisher of the Niagara Falls Gazette, unlawfully conspired or combined with Defendant Better Business Bureau of Western New York, Inc. and other Defendants and Co-Conspirators unknown to Plaintiffs to prevent Class Plaintiff General Auto Sales & Leasing, Inc., one of Nabcor's franchisees, from advertising in the Niagara Falls Gazette, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in the Niagara Falls Gazette.

(lll) In 1967-69, THE PLAIN DEALER, publisher of The Plain Dealer, unlawfully conspired or combined with Co-Conspirators Better Business Bureau of Cleveland and C. E. Sherman (Chief of the Ohio Motor Vehicle Department) and with various Defendants and other Co-Conspirators unknown to Plaintiffs to prevent Nabcor from advertising in The Plain Dealer, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in The Plain Dealer.

(mmm) In 1967, WESTCHESTER ROCKLAND NEWSPAPERS, INC., publisher of the Herald Statesman, unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to prevent Nabcor and Class Plaintiff Nabcor of East New York, Inc. (under the name Turco Auto Sales and Leasing Corp.), one of Nabcor's franchisees, from advertising in the Herald Statesman, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in the Herald Statesman.

(nnn) In 1967, the corporate publisher of the WORLD JOURNAL TRIBUNE (now defunct), a newspaper which itself, or through its predecessors, had been accepting advertising from Nabcor and its franchisees, unlawfully conspired or combined with various Defendants and Co-Conspirators unknown to Plaintiffs to reject any further advertising by Nabcor or its franchisees, for the purpose of eliminating Nabcor and its franchisees as competitors of factory-franchised dealers who were advertising in the World Journal Tribune.

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112B. As a direct consequence of the unlawful activities of the Conspiracy Defendants alleged throughout paragraphs 1-112A, Plaintiff Nabcor, the Class Plaintiffs and the other Nabcor franchisees suffered enormous losses in anticipated profits by being unlawfully prevented from establishing, and thereby being in on the ground floor of, an automobile brokerage industry, as conceived by Plaintiff Frank Maiorana, and maintaining the leading position therein. By the date of this Complaint, Plaintiffs would have achieved a sales level of approximately 8% of the entire market for new automobiles in the United States; would have achieved used automobile sales amounting to about 60% of the number of new automobiles sold through the Nabcor system; and would have derived substantial additional income from related financing and insurance arrangements.

112C. As a direct consequence of the unlawful activities of the Conspiracy Defendants alleged throughout paragraphs 1-112A, the business of Plaintiff Nabcor suffered severe financial reversals, and Nabcor's principal officers, Plaintiffs Frank Maiorana and Anthony Maiorana, were each obliged to work an extraordinary number of hours per week, during the preceding 4-year period, for which services Nabcor was financially unable to pay more than a nominal portion of the full value.

COUNT TWO

(MONOPOLY OR ATTEMPT TO MONOPOLIZE)

113. As a second count of this Complaint, against the Conspiracy Defendants (defined in paragraph 91 above), Plaintiffs Nabcor, Frank Maiorana, Anthony Maiorana, and the Class Plaintiffs (defined in paragraph 4 above) on behalf of themselves and all other Nabcor franchisees, repeat and reallege all that is alleged in paragraphs 1-112C under the first count of this Complaint, and in addition thereto allege that the allegations constitute a violation of Section 2 of the Sherman Act.

(Next page is 54)

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COUNT THREE

(RESTRAINT OF TRADE - DISTRICT OF COLUMBIA)

114. As a third count of this Complaint, against the Conspiracy Defendants (defined in paragraph 91 above), Plaintiffs Nabcor, Frank Maiorana, Anthony Maiorana, and the Class Plaintiffs (defined in paragraph 4 above) on behalf of themselves and all other Nabcor franchisees, repeat and reallege all that is alleged in paragraphs 1-112 under the first count of this Complaint, and in addition thereto allege that a material part of the alleged conspiratorial activities took place and restrained commerce in the District of Columbia, and that the allegations constitute a violation of Section 3 of the Sherman Act.

COUNT FOUR

(ACQUISITIONS SUBSTANTIALLY LESSENING COMPETITION)

115. As a fourth count of this Complaint, against Defendants General Motors Corporation ("GM") and Ford Motor Company ("Ford"), Plaintiffs Nabcor, Frank Maiorana, Anthony Maiorana, and the Class Plaintiffs (defined in paragraph 4 above) on behalf of themselves and all other Nabcor franchisees, repeat and reallege all that is alleged in paragraphs 1-112 under the first count of this Complaint, and in addition thereto allege that each of the factory-franchised dealer corporations acquired by Defendants GM and Ford, as referred to in paragraph 111(B)(2)(e) of this Complaint, were engaged in commerce as part of the interstate distribution of new automobiles; that each of such acquisitions substantially lessened competition or tended to create a monopoly by simultaneous termination of Nabcor's agreements with the acquired corporations to supply new automobiles at fleet prices to Nabcor; and that the allegations set forth in paragraph 111(B)(2)(e) constitute a violation of Section 7 of the Clayton Act, causing a loss of customers and their good will, franchisees, franchise income, and moneys expended in lawsuits and pacifying franchisees.

COUNT FIVE

(RESTRAINT OF TRADE THROUGH WARRANTY PROGRAM)

116. As a fifth count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count five as the "Defendant Manufacturers"), Plaintiffs Nabcor, Frank Maiorana, Anthony Maiorana, and the Class Plaintiffs (defined in paragraph 4 above) on behalf of themselves and all other Nabcor franchisees, repeat and reallege all that is alleged in paragraphs 1-112 under the first count of this Complaint, and in addition thereto allege:

(a) The warranty program (defined in paragraph 95 above) of each of the Defendant Manufacturers unlawfully forces purchasers of automobiles from Nabcor to obtain warranty work (defined in paragraph 94 above) from franchised dealers (defined in paragraph 99 above), by not making a warranty program or related payments available to Nabcor with which Nabcor can satisfy the warranty claims of its customers.

(b) Each of the Defendant Manufacturers makes payments on warranty claims to Nabcor's competitors (defined in paragraph 98 above), including franchised dealers, leasing companies (defined in paragraph 96 above) and other fleet purchasers (see paragraphs 96 and 97).

(c) The warranty programs of the Defendant Manufacturers do not afford Nabcor an opportunity to profit from a warranty program, unlike Nabcor's competitors.

(d) The warranty programs of the Defendant Manufacturers do not allow Nabcor to administer the warranty claims and work, which unlawfully restrains Nabcor as a competitor of franchised dealers from building good will and obtaining repeat new automobile sales.

(e) The warranty programs of the Defendant Manufacturers permit Nabcor's customers to be harrassed, and otherwise deprived of the benefits of the manufacturers' warranties to which the Nabcor customers are fully entitled by contract and law.

(f) The warranty programs of the Defendant Manufacturers are designed to and do in fact injure the business of competitors of franchised dealers such as Nabcor and its franchisees, causing losses of good will and income from warranty work.

(g) The foregoing allegations constitute a violation of Section 1 of the Sherman Act.

COUNT SIX

(MONOPOLY OR ATTEMPT TO MONOPOLIZE - WARRANTY PROGRAM)

117. As a sixth count of the Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count six as the "Defendant Manufacturers"), Plaintiffs Nabcor, Frank Maiorana, Anthony Maiorana, and the Class Plaintiffs (defined in paragraph 4 above) on behalf of themselves and all other Nabcor franchisees, repeat and reallege all that is alleged in paragraph 116 under the fifth count of this Complaint, and in addition thereto allege that the allegations constitute a violation of Section 2 of the Sherman Act.

COUNT SEVEN

(RESTRAINT OF TRADE THROUGH WARRANTY PROGRAM - DISTRICT OF COLUMBIA)

118. As a seventh count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count seven as the "Defendant Manufacturers"), Plaintiffs Nabcor, Frank Maiorana, Anthony Maiorana, and the Class Plaintiffs (defined in paragraph 4 above) on behalf of themselves and all other Nabcor franchisees, repeat and reallege all that is alleged in paragraph 116 under the fifth count of this Complaint, and in addition thereto allege that a material part of the alleged activities took place and restrained commerce in the District of Columbia, and that the allegations constitute a violation of Section 3 of the Sherman Act.

COUNT EIGHT

(DEFAMATION ACTION)

119. As an eighth count of this Complaint, against The Better Business Bureau of Metropolitan New York, Inc. (the "New York BBB") and National Better Business Bureau, Inc. (the "National BBB"), Plaintiff Nabcor repeats and realleges all that is alleged in paragraphs 1-3, 6, 24-46, 58, 61, 89-92, 98, 100 and 104-112 under the first count of this Complaint, and in addition thereto alleges that:

(a) The jurisdiction of this Court over the Defendants New York BBB and National BBB in counts one through three of this Complaint, alleging federal questions, provide the jurisdiction over these Defendants in this eighth count, alleging defamation, based on the doctrine of pendent jurisdiction.

144. The effect of requiring Nabcor to pay the advertising contributions without any rebate from the Defendant Manufacturers is to:

(a) Require Nabcor to pay for advertising for the benefit of franchised dealers who may be in competition with Nabcor or any of its franchisees.

(b) Force the dealer supplying new automobiles to Nabcor to have Nabcor pay the dealer's advertising contribution, depriving Nabcor and the dealer of the opportunity to agree between themselves on the disposition of the moneys representing such advertising contributions on new automobiles purchased by Nabcor.

(c) Make Nabcor and its franchisees less competitive with leasing companies and fleet purchasers, who are not required to pay such advertising contributions, and make Nabcor and its franchisees less competitive with the supplying franchised dealer, who obtains a theoretical benefit at least from the advertising purchased with the advertising contributions paid by such dealer on new automobiles bought by the dealer for resale to his own retail customers.

145. Requiring Nabcor to pay the advertising contribution without full refund from the Defendant Manufacturers is a price or service discrimination which violates subparagraphs (a), (d) and/or (e) of Section 2 of the Clayton Act.

COUNT FIFTEEN

(FINANCING-INSURANCE SERVICE AND ALLOWANCE DISCRIMINATION)

146. As a fifteenth count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter referred to in this count fifteen as the "Defendant Manufacturers"),

Plaintiff Nabcor, and the Class Plaintiffs described above in paragraphs 9-15 on behalf of themselves and all other Nabcor franchisees, repeat and reallege all that is alleged in paragraphs 1-6, 9-15, 96-103 and 136-140, and in addition thereto allege:

Financing-Insurance Service and Allowance Discrimination

147. Each of the Defendant Manufacturers has a wholly-owned financing-insurance subsidiary from which the franchised dealers of each Defendant Manufacturer are able to obtain financing and insurance for their customers, and in connection therewith are paid a rebate or allowance of a portion of the business directed by them to such subsidiary.

148. The name of the financing-insurance subsidiary of General Motors Corporation is General Motors Acceptance Corporation, named as a Defendant in counts one through three of this Complaint; the name of the financing-insurance subsidiary of Ford Motor Company is Ford Motor Credit Company; the name of the financing-insurance subsidiary of Chrysler Corporation is Chrysler Credit Corporation; and the name of the financing-insurance subsidiary of American Motors Corporation was Redisco, Inc., which was sold during 1967 to Chrysler Credit Corporation. Hereinafter, the four financing-insurance subsidiaries shall be referred to collectively as the "Financing-Insurance Subsidiaries".

149. Each of the Financing-Insurance Subsidiaries makes or made available to the franchised dealers of the respective parent manufacturers services, benefits and allowances including the following:

(a) Financing for new automobiles purchased by franchised dealers for resale to retail customers or for resale to leasing companies or fleet purchasers.

(b) Automobile or credit insurance for new automobiles purchased by franchised dealers for resale to retail customers or for resale to leasing companies or fleet purchasers.

(c) Cash allowances or rebates to the franchised dealer attributable to financing and/or insurance business directed to the Financing-Insurance Subsidiary on new automobiles sold by the franchised dealer.

150. None of the services, benefits or allowances described in the preceding paragraph is made available to Nabcor, its franchisees or their customers.

151. The effect of denying these services, benefits and allowances to Nabcor, its franchisees and their customers is to:

(a) Make Nabcor and its franchisees less competitive with franchised dealers in the marketing of new automobiles to retail customers, at a loss of anticipated profits.

(b) Foreclose the opportunities for Nabcor and its franchisees to obtain allowances or rebates in financing or insurance acquired by Nabcor or its franchisees for their retail customers of new automobiles, at a loss of anticipated profits.

152. Denying these services, benefits and allowances to Nabcor, its franchisees and their customers is a price or service discrimination which violates subparagraphs (a), (d) and/or (e) of Section 2 of the Clayton Act.

COUNT SIXTEEN

(WARRANTY DISCRIMINATION)

153. As a sixteenth count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter referred to in this count sixteen as the "Defendant Manufacturers"), Plaintiff Nabcor, and the Class Plaintiffs described above in paragraphs 9-15 on behalf of themselves and all other Nabcor franchisees, repeat and reallege all that is alleged in paragraphs 1-6, 9-15, 96-103 and 136-140, and in addition thereto allege:

Warranty Discrimination

154. Each of the Defendant Manufacturers has a Warranty Program (defined above in paragraph 95) under which purchasers of new automobiles (defined above in paragraph 100) are indemnified against the cost of repairs (including parts and labor) relating to automobile defects reported during a limited period of time subsequent to purchase. For 1970-71 models of automobiles, the minimum period is 1 year or 12,000 miles for all Defendant Manufacturers. Any repairs under warranty coverage are referred to as "Warranty Work" (defined above in paragraph 94).

155. Each of the Defendant Manufacturers requires that franchised dealers (defined above in paragraph 99) having service facilities make such facilities available for Warranty Work, and agrees to compensate the franchised dealer according to a schedule of charges for different categories of repair jobs based upon estimates or industry experience on the length

of time a given repair job should take, and the pay scale of automobile mechanics in the area covering the franchised dealer's location. The franchised dealer is also paid for factory-authorized parts used in repairs covered by the factory warranty, calculated to give the franchised dealer a markup or gross profit ranging from 25-30% on the parts used in the Warranty Work.

156. Each of the Defendant Manufacturers also makes a Warranty Program available to leasing companies (defined above in paragraph 96) and fleet purchasers (see paragraph 97), who are paid directly by the Defendant Manufacturer for repairs performed under the warranty on new automobiles purchased by them. The compensation paid by Defendant Manufacturers to the leasing companies and fleet purchasers is believed by Plaintiffs to be substantially the same as the amount paid to franchised dealers for the same category of repair work.

157. None of the Defendant Manufacturers makes a Warranty Program of any kind available to Nabcor or its franchisees, and in many instances the benefit of the factory warranty has been denied to customers of Nabcor and its franchisees, by refusal to recognize that a purchaser of a new automobile from Nabcor or its franchisees is the purchaser of a new automobile for purposes of the warranty.

158. The effect of Defendant Manufacturers' not having made a Warranty Program available to Nabcor or its franchisees is to:

(a) Make Nabcor and its franchisees less competitive with factory-franchised dealers, leasing companies and fleet purchasers in the marketing of new automobiles to retail customers.

(b) Foreclose any opportunity for Nabcor and its franchisees to derive any profit from administration of the Warranty Program covering new automobiles sold by Nabcor and its franchisees.

(c) Make Nabcor and its franchisees rely upon the factory-franchised dealers, who may be direct competitors of Nabcor or its franchisees, for performance of Warranty Work for Nabcor's customers, with the possible loss of customers by Nabcor and its franchisees to such factory-franchised dealers.

(d) Prevent Nabcor from competing with franchised dealers by not permitting Nabcor and its franchisees to establish a warranty program available to any purchaser of new automobiles.

(e) Prevent Nabcor and its franchisees from establishing good will with their customers, through denial of a Warranty Program to Nabcor and its franchisees, particularly when Warranty Work for Nabcor's customers now being performed by factory-franchised dealers is often of inferior quality, and is not being solicited for that matter by such dealers.

159. Not making a Warranty Program available to Nabcor and its franchisees is a price or service discrimination which violates subparagraphs (a), (d) and/or (e) and (f) of Section 2 of the Clayton Act, and has caused substantial losses.

COUNT SEVENTEEN

(FLEET PROGRAM DISCRIMINATION)

160. As a seventeenth count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter in this count seventeen referred to as the "Defendant Manufacturers"), Plaintiff Nabcor, and the Class Plaintiffs

described above in paragraphs 9-15 on behalf of themselves and all other Natcor franchisees, repeat and reallege all that is alleged in paragraphs 1-6, 9-15, 96-103 and 136-140, and in addition thereto allege:

Fleet Program Discrimination

161. Each of the Defendant Manufacturers has a fleet program (defined above in paragraph 97) under which purchasers (including leasing companies) of 10 or more new automobiles of any make each year are granted a fleet certificate number (defined above in paragraph 97) by one or more Defendant Manufacturers entitling the holder of the fleet certificate number (hereinafter the "Fleet Purchaser") to purchase new automobiles through factory-franchised dealers of the manufacturers issuing the fleet certificate number.

162. The terms applicable to Fleet Purchasers' purchases may be summarized as follows:

(a) Payment of the Defendant Manufacturers' prices to the franchised dealer (hereinafter the "Tissue Price") plus a preparation (or "Get Ready") charge ranging from $25 to $50, approximately.

(b) A rebate from the Defendant Manufacturer ranging from 1-5% of the Tissue Price.

(c) An elimination of the Advertising Contribution charge (see paragraph 144 under count fourteen above) from the total purchase price otherwise payable by the Fleet Purchaser.

(d) Availability of financing and/or insurance through the Financing-Insurance Subsidiary of the Defendant Manufacturer.

(e) Rebates or allowances from the Financing-Insurance Subsidiary of the Defendant Manufacturer attributable to business directed to the subsidiary by the Fleet Purchaser.

(f) A Warranty Program covering the purchased automobile to be administered at a possible profit by the Fleet Purchaser.

163. None of the Defendant Manufacturers will assign a fleet certificate number to Nabcor.

164. The effect of not assigning a fleet certificate number to Nabcor is to:

(a) Deprive Nabcor and its franchisees of the allowances and services (described in paragraph 162 above) granted by the Defendant Manufacturers to the Fleet Purchasers.

(b) Make Nabcor and its franchisees less competitive with Fleet Purchasers (including leasing companies) in the marketing of new automobiles to retail and fleet customers.

165. By not issuing a fleet certificate number to Nabcor and by denying the benefits of a Fleet Purchaser to Nabcor, Defendant Manufacturers are discriminating in price and service against Nabcor and its franchisees, in violation of subparagraphs (a), (d) and/or (e) and (f) of Section 2 of the Clayton Act, causing substantial losses.

COUNT EIGHTEEN

(RESTRAINT OF TRADE - DESTINATION CHARGES)

166. As an eighteenth count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter referred

to as the "Defendant Manufacturers"), Plaintiff Nabcor and the Plaintiffs described above in paragraphs 9-15, on behalf of themselves and, as designated below in paragraph 168(iii), all other Nabcor franchisees, all franchised dealers (defined above in paragraph 99) and all purchasers under a fleet certificate number (defined above in paragraph 97) who have paid destination charges, including excessive and "phantom freight" charges (that is, freight overcharges) on new automobiles (defined above in paragraph 100) purchased by them (hereinafter collectively referred to in this count eighteen as the "Class Automobile Retailers"), repeat and reallege all that is alleged in paragraphs 1-3, 6-15 and 96-103, and in addition thereto allege:

Class Action Allegations

167. Plaintiff Nabcor and the Plaintiffs described above in paragraphs 9-15, claim that subdivision (1)(A), (2) and, with the appropriate findings by this Court, subdivision (3) of Rule 23(b) of the Federal Rules of Civil Procedure make it proper for the designated Plaintiffs to maintain counts eighteen through twenty-seven of this Complaint as follows:

(a) By the Plaintiffs described in paragraphs 9-15 as class or sub-class actions on behalf of all Nabcor franchisees.

(b) By Plaintiff Nabcor and the Plaintiffs described in paragraphs 9-15 as a class action on behalf of all new automobile dealers franchised by General Motors Corporation, Ford Motor Company, Chrysler Corporation or American Motors Corporation and not wholly-owned by the Defendant Manufacturer, hereinafter collectively referred to as the "Independent Franchised Dealers".

(c) By Plaintiff Nabcor and the Plaintiffs described in paragraphs 9-15 as a class action on behalf of all purchasers (including leasing companies) under a fleet certificate number (hereinafter referred to as "fleet purchasers") issued by any of the Defendant Manufacturers, which purchasers are not wholly-owned by any of the Defendant Manufacturers but have paid freight charges established by any of the Defendant Manufacturers in excess of the actual cost of transportation of any one or more purchased new automobiles (including a reasonable profit on transportation means wholly-owned by the Defendant Manufacturer), collectively referred to as the "Independent Fleet Purchasers" and the "Independent Leasing Companies", respectively.

168. Plaintiff Nabcor and the Plaintiffs described above in paragraphs 9-15 claim that the following averments justify a finding that the designated Plaintiffs are entitled to maintain counts eighteen through twenty-seven as class or sub-class actions on behalf of the classes referred to in subparagraphs (a), (b) and (c) of paragraph 167:

(i) There are approximately:

(a) 200 Nabcor franchisees, consisting of approximately 9 Master Brokers, 31 Area Brokers and 160 Brokers.

(b) 27,000 factory-franchised dealers (excluding leasing companies and other fleet purchasers), consisting of approximately 12,000 General Motors Corporation, 7,000 Ford Motor Company, 6,000 Chrysler Corporation and 2,000 American Motors Corporation dealers (less an unknown number which are wholly-owned by any of the Defendant Manufacturers).

(c) Several thousand Independent Fleet Purchasers and Leasing Companies.

(ii) A description of the members of each class or sub-class follows:

(a) Class and sub-classes of Nabcor franchisees - Refer to paragraph 5(ii) of this Complaint, which is hereby repeated and realleged in its entirety.

(b) Class of Independent Franchised Dealers - The class of Independent Franchised Dealers shall consist of all new automobile dealers franchised in the United States, during any part of the preceding 4-year period, by any one or more of the Defendant Manufacturers, which are not wholly-owned by any of the Defendant Manufacturers.

(c) Class of Independent Fleet Purchasers and Leasing Companies - The class of Independent Fleet Purchasers and Leasing Companies shall consist of all persons or entities in the United States (not wholly-owned by any of the Defendant Manufacturers) who, during any part of the preceding 4-year period, purchased new automobiles for resale or lease under a fleet program using a fleet certificate number issued by any one or more of the Defendant Manufacturers.

(iii) Plaintiff Nabcor and/or the Plaintiffs described above in paragraphs 9-15 claim that they will fairly and adequately protect the interests of the classes and sub-classes referred to in subparagraphs (a), (b) and (c) of paragraph 167 on the basis that:

I. By the Plaintiffs described in paragraphs 9-15 on behalf of all Nabcor franchisees, as to counts eighteen through twenty-seven, as follows:

(a) Refer to paragraph 5(iii) of this Complaint, which is hereby repeated and realleged in its entirety.

(b) Plaintiff Nabcor, with whom the Plaintiffs described in paragraphs 9-15 are making this Complaint, may be more acquainted with the facts and issues involved in counts eighteen through twenty-seven, and has a vital interest in seeing that antitrust violations by the Defendant Manufacturers are proven and that appropriate monetary and/or injunctive relief is granted, to eliminate price and service discriminations, price fixing, tying arrangements and other practices which unlawfully restrain competition in or monopolize the marketing of new automobiles.

II. By Plaintiff Nabcor and the Plaintiffs described in paragraphs 9-15 on behalf of all Independent Franchised Dealers, as to counts eighteen through twenty-five and twenty-seven (except as to Independent Franchised Dealers which are also Independent Fleet Purchasers), as follows:

(a) No Independent Franchised Dealers, Fleet Purchasers or Leasing Companies, except the Chrysler dealers described below in subparagraph (v)(B), have been willing or able to raise any one of the issues covered by this Complaint against any of the Defendant Manufacturers, probably out of fear of losing the valuable franchise or fleet certificate number and/or the prospects for only a limited recovery which most Independent Franchised Dealers, Fleet Purchasers or Leasing Companies would probably obtain if any such suit by them were entirely successful; because of the constant fear of factory disapproval and consequent reprisal, counts eighteen through twenty-seven of this Complaint could only be raised, up to this date at least, by Plaintiffs such as Nabcor and its franchisees, who the Defendant Manufacturers have been trying to exclude from the retail marketing of new automobiles because of the competition they afford to the factory-franchised dealers.

(b) Refer to subparagraph I(b) above, which is hereby repeated and realleged in its entirety.

III. By Plaintiff Nabcor and the Plaintiffs described in paragraphs 9-15 on behalf of all Independent Fleet Purchasers and Leasing Companies, as to counts eighteen through twenty-three, twenty-five, twenty-six, and twenty-seven (except as to Independent Fleet Purchasers or Leasing Companies which are also Independent Franchised Dealers), as follows:

(a) Refer to subparagraphs II(a-b) above, which are hereby repeated and realleged in their entirety.

(iv) The following questions of law or fact are claimed to be common to the classes and sub-classes:

(a) Whether the Defendant Manufacturers' destination charges for new automobiles are mandatory and excessive, and whether part of the destination charges are "phantom" charges for non-existent transportation; and whether the destination charge policies of the Defendant Manufacturers constitute a violation of:

(1) Section 1 of the Sherman Act, as an unlawful conspiracy or combination to restrain commerce in the marketing of new automobiles through price-fixing or tying arrangements.

(2) Section 2 of the Sherman Act, as a monopoly or attempt to monopolize, or a combination or conspiracy to monopolize in the marketing of new automobiles through price-fixing or tying arrangements.

(3) Section 3 of the Sherman Act, as an unlawful conspiracy or combination to restrain commerce in the marketing of new automobiles in the District of Columbia through price-fixing or tying arrangements.

(4) Section 2(a) of the Clayton Act as an unlawful discrimination in new automobile prices favoring protected franchised dealers at the expense of the more competitive new automobile dealers.

(5) Section 3 of the Clayton Act as an unlawful tying arrangement, wherein the destination charges are unlawfully tied to the sale of new automobiles.

(6) The common law doctrines of fraud and intentional misrepresentation, by not disclosing to Class Automobile Retailers or the ultimate purchasers of new automobiles that the destination charges in many instances were in excess of actual costs (plus a reasonable profit) or were being charged for automobile transportation which had never taken place from the F.O.B. place designated by the manufacturer.

(b) Whether and to what extent, if any, the following policies of the Defendant Manufacturers in granting rebates or other allowances to some but not all Class Automobile Retailers constitute violations of Section 2(a) of the Clayton Act:

(1) Rebate ranging from 1-5% of the wholesale price of new automobiles purchased by fleet purchasers.

(2) Holdback of approximately 2% of the wholesale price of new automobiles which at the end of each year is paid over to the purchasing franchised dealers.

(3) Combination payment ranging from 3-7% of the rebate (1-5%) and holdback (2%) described in subparagraphs (1) and (2) above which is paid to franchised dealers who are also fleet purchasers.

(v) Counts eighteen through twenty-seven, mentioned above, are claimed to be maintainable by the Plaintiffs described in paragraphs 6 and 9-15 and designated in each of such counts, respectively (the "Class Plaintiffs"), as class or sub-class actions under subdivision (b)(3) of Rule 23 of the Federal Rules of Civil Procedure; and the designated Class Plaintiffs claim that the following averments support the findings required by said subdivision (b)(3):

(A) Most Class Automobile Retailers sell and apparently anticipate selling in the future fewer than 1,000 new automobiles each year and, accordingly, may be deemed not to have any substantial monetary interest in the outcome of these counts, making it unlikely that any of such Class Automobile Retailers or members of any sub-class thereof would be interested in individually controlling the prosecution of any of such counts under any separate actions. It is also probable that most Independent Franchised Dealers, Fleet Purchasers and Leasing Companies would not risk upsetting their established business relationships with any of the Defendant Manufacturers, even though such Class Automobile Retailers would be willing, apparently, to share in any benefits as members of the class or sub-classes.

(B) No litigation concerning the controversy has been commenced previously by members of Class Automobile Retailers except that, in 1970, in the Federal District Court of the District of Columbia, Chrysler dealers Loren Kirkpatrick (Kirkpatrick Motor Sales Co. - Chrysler-Plymouth) and Raphael Cohen (Merit Motors - Dodge) instituted suit against Chrysler

Corporation on behalf of themselves and all other Chrysler franchised dealers charging Chrysler Corporation with an attempt to monopolize and with price discrimination through the fleet and lease programs of Chrysler Corporation.

(C) It is desirable to concentrate the litigation of claims in this Court because of (i) the substantial number and/or importance of members of the class and sub-classes of Class Automobile Retailers located in this jurisdiction; (ii) the substantial amounts of money which may be recovered in the aggregate on behalf of Class Automobile Retailers located in this jurisdiction; (iii) the presence of the principal places of business of General Motors Corporation and Ford Motor Company, the largest and (in connection with these actions) most important of the Defendant Manufacturers; and (iv) the economic advisability of determining the rights of, and any damages to, the Class Plaintiffs and other Class Automobile Retailers in a single action.

(D) The difficulties likely to be encountered in the management of the class actions being brought in counts eighteen through twenty-seven of this Complaint do not appear to be material inasmuch as many or most of the factual issues should be resolved by stipulation; the primary issues appear to be of law, basically; and the Defendant Manufacturers have or have access to full information on the names and addresses of the Independent Franchised Dealers, Fleet Purchasers and Leasing Companies, and the amounts and prices of their respective automobile purchases during the preceding four years, in the event liability is established.

Restraint of Trade - Destination Charges

169. Beginning one or more decades prior to the date of this Complaint, the exact date being unknown to the Plaintiffs, and continuing up to and including the date of the filing of this Complaint, the Defendant Manufacturers and other persons unknown to the Plaintiffs (the "Co-Conspirators") have and now are engaged in a continuing unlawful combination or conspiracy unreasonably to restrain or monopolize interstate trade and commerce in new automobiles of domestic manufacture, in violation of Section 1 of the Sherman Act.

170. The aforesaid unlawful combination or conspiracy has consisted of a continuing agreement and concert of action among the Defendant Manufacturers and Co-Conspirators, the substantial terms and objects of which have included:

(a) That each of the Defendant Manufacturers sell its new automobiles to its franchised dealers at the manufacturer's wholesale price plus additional charges including a destination charge, and that this destination charge be based on an assumed shipment from Detroit, Michigan or possibly from other assembly points in the United States.

(b) That the destination charge be a mandatory item charged to the purchasing franchised dealer even if he, at his own expense, picks up the purchased automobile at the manufacturer's assembly plant wherever located and drives the automobile back to his franchised dealership; and that in such event the manufacturer has no expense whatever to transport the new automobile to the purchasing franchised dealer.

(c) That each of the Defendant Manufacturers own or control all or a substantial number of the organizations which transport new automobiles to its franchised dealers.

(d) That the destination charges for actual automobile shipments collected by each of the Defendant Manufacturers not be used in their entirety to pay for actual transportation expenses incurred (plus a reasonable profit); that, instead, a portion of the destination charges over and above the actual expenses of transportation (plus a reasonable profit) become additional profits for the Defendant Manufacturers; and that no written statement accompany the destination charge to explain to purchasers that it is in excess of the actual expenses of transportation (plus a reasonable profit).

(e) That all or part of a substantial percentage of destination charges collected by the Defendant Manufacturers be so-called "phantom freight" charges, which are charges for automobile transportation never taking place; and that no written statement accompany the destination charge to explain to a purchaser that all or part of such charge is being paid for transportation which never took place.

(f) That each of the Defendant Manufacturers add the destination overcharges described above in subparagraphs (d) and (e) to the wholesale prices of new automobiles in a manner unrelated to the actual mileage or mode of transportation involved in shipment of the new automobile.

(g) That the destination overcharges described above in subparagraphs (d) and (e) be fixed in such a way as to prevent factory-franchised or independent (non-franchised) dealers from buying new automobiles in one zone or area of the United States and driving or otherwise transporting them to another; and that the destination charge between two distant points be kept substantially lower than the mileage rate normally charged for shipping automobiles such distance, so that the profitability in moving new automobiles from one part of the country to another part for resale in competition with local franchised dealers be eliminated or substantially curtailed, but at the expense of having to overcharge the franchised dealer nearer to the assembly plant by adding phantom freight to his destination charge.

171. That the object of the Defendant Manufacturers was (i) to tie in the destination charge to the manufacturer's sale of the new automobiles and, by adjusting the amount of such charges, assist franchised dealers seeking protection from persons transporting new automobiles from one part of the country into the territory of such franchised dealers; (ii) for General Motors Corporation to fix artificially high prices in marketing areas serviced by local assembly plants, to which areas Chrysler Corporation and American Motors Corporation were shipping automobiles to their dealers at comparatively high shipping expenses, thereby permitting Chrysler Corporation and American Motors Corporation to compete, but at the expense of franchised dealers of General Motors Corporation located in such area; and (iii) to profit from the mandatory destination charges over and above the actual expenses incurred in new automobile transportation (plus a reasonable profit), which tying arrangement actually

increased the wholesale price of new automobiles and therefore discriminated against dealers paying the excessive destination charge in favor of competing franchised dealers receiving the manufacturers' protection, causing substantial losses to the Plaintiffs and other class members.

COUNT NINETEEN

(MONOPOLY OR ATTEMPT TO MONOPOLIZE - DESTINATION CHARGES)

172. As a nineteenth count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count nineteen as the "Defendant Manufacturers"), Plaintiffs Nabcor and the Plaintiffs described above in paragraphs 9-15, on behalf of themselves and all Class Automobile Retailers (defined in paragraph 166), repeat and reallege all that is alleged in paragraphs 166-171 of this Complaint, and in addition thereto allege that the allegations constitute a violation of Section 2 of the Sherman Act.

COUNT TWENTY

(RESTRAINT OF TRADE - DESTINATION CHARGES - DISTRICT OF COLUMBIA)

173. As a twentieth count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count twenty as the "Defendant Manufacturers"), Plaintiffs Nabcor and the Plaintiffs described above in paragraphs 9-15, on behalf of themselves and all Class Automobile Retailers (defined in paragraph 166), repeat and reallege all that is alleged in paragraphs 166-171 of this Complaint, and in addition thereto allege that a material part of the alleged activities took place and restrained commerce in the District of Columbia, and that the allegations constitute a violation of Section 3 of the Sherman Act.

COUNT TWENTY-ONE

(PRICE DISCRIMINATION - DESTINATION CHARGES)

174. As a twenty-first count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count twenty-one as the "Defendant Manufacturers"), Plaintiffs Mabcor and the Plaintiffs described above in paragraphs 9-15, on behalf of themselves and all Class Automobile Retailers (defined in paragraph 166), repeat and reallege all that is alleged in paragraphs 166-171 of this Complaint, and in addition thereto allege as follows:

(a) That destination charges are tied to the sale of new automobiles by the Defendant Manufacturers.

(b) That a portion of the destination charges in excess of the actual costs of transportation (plus a reasonable profit) are an excess profit to the Defendant Manufacturers.

(c) That the excess profit is in reality a hidden increase in the wholesale price of the affected new automobiles.

(d) That certain members of the Class Automobile Retailers paid higher than the wholesale prices paid by their competitors who were reselling the same line of new automobiles.

(e) That by so charging excess destination charges, the Defendant Manufacturers have violated Section 2(a) of the Clayton Act, wherein the effect may be substantially to lessen competition or to tend to create a monopoly in the marketing of new automobiles, causing substantial losses to the Plaintiffs and other class members.

COUNT TWENTY-TWO

(UNLAWFUL TYING ARRANGEMENT - DESTINATION CHARGES)

175. As a twenty-second count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count twenty-two as the "Defendant Manufacturers"), Plaintiff Nabcor and the Plaintiffs described above in paragraphs 9-15, on behalf of themselves and all Class Automobile Retailers (defined in paragraph 166), repeat and reallege all that is alleged in paragraphs 166-171 of this Complaint, and in addition thereto allege that the allegations constitute a violation of Section 3 of the Clayton Act, as an unlawful tying of the destination charges to the sale of new automobiles at the wholesale level.

COUNT TWENTY-THREE

(NON-DISCLOSURE OF EXCESSIVE DESTINATION CHARGES - FRAUD AND MISREPRESENTATION)

176. As a twenty-third count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count twenty-three as the "Defendant Manufacturers"), Plaintiff Nabcor and the Plaintiffs described above in paragraphs 9-15, on behalf of themselves and all Class Automobile Retailers (defined in paragraph 166), repeat and reallege all that is alleged in paragraphs 166-171 of this Complaint, and in addition thereto allege that:

Jurisdiction

177. The jurisdiction of this Court over the Defendant Manufacturers in counts eighteen through twenty-two of this Complaint, alleging federal questions, provide the jurisdiction over the Defendant Manufacturers in this twenty-third count,

alleging a common law action based on fraud and intentional misrepresentation, based on the doctrine of pendent jurisdiction.

Fraud and Misrepresentation

178. The Defendant Manufacturers failed to disclose to the Class Automobile Retailers that part of their respective destination charges were excessive or related to non-existent or "phantom" transportation, and that failure to disclose such information was a fraud or an intentional material misrepresentation, which prevented the Class Automobile Retailers from seeking alternatives through legal or other means to continuing payment of the excessive or "phantom" destination charges imposed on the Class Automobile Retailers, causing substantial losses to the Plaintiffs and other class members.

179-195. Omitted.

COUNT TWENTY-FOUR

(PRICE DISCRIMINATION - FLEET REBATE)

196. As a twenty-fourth count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count twenty-four as the "Defendant Manufacturers"), Plaintiff Nabcor and the Plaintiffs described above in paragraphs 9-15, on behalf of themselves and all other Nabcor franchisees, and all franchised dealers (defined above in paragraph 99) who are not also purchasers under a fleet certificate number (defined above in paragraph 97), hereinafter collectively referred to in this count twenty-four as the "Class Automobile Retailers", repeat and reallege all that is alleged in paragraphs 1-3, 6-15, 96-103 and 166-168, and in addition thereto allege:

(a) The Defendant Manufacturers rebate to fleet purchasers of new automobiles an amount ranging from approximately

1-5% of the wholesale price of the new automobiles purchased by the fleet purchasers (hereinafter any such rebate shall be referred to as the "fleet rebate").

(b) The fleet rebate is paid directly to the fleet purchaser by the Defendant Manufacturers; or the fleet rebate is made through the franchised dealer from whom the fleet purchases are made, by a direct reduction in the fleet purchase price. In such event the Defendant Manufacturers pay the fleet rebate to the franchised dealer.

(c) The fleet rebate is not made available to Class Automobile Retailers, who are in competition with fleet purchasers in the marketing of new automobiles.

(d) By not making a fleet rebate available to Class Automobile Retailers on proportionately equal terms, the Defendant Manufacturers are committing a price discrimination in violation of Section 2(a) of the Clayton Act, causing substantial losses to the Plaintiffs and other class members.

COUNT TWENTY-FIVE

(PRICE DISCRIMINATION - 2% HOLDBACK)

197. As a twenty-fifth count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count twenty-five as the "Defendant Manufacturers"), Plaintiff Nabcor and the Plaintiffs described above in paragraphs 9-15, on behalf of themselves and all other Nabcor franchisees, and all purchasers under a fleet certificate number (defined above in paragraph 97) who are not also franchised dealers (hereinafter collectively referred to in this count twenty-five as the "Class Automobile Retailers"), repeat and reallege all that is alleged in paragraphs 1-3, 6-15, 96-103, 166-168 and 196, and in addition thereto allege:

(a) Each of the Defendant Manufacturers holds back approximately 2% of the wholesale price of new automobiles purchased by its franchised dealers (hereinafter referred to as the "2% holdback"), credits the amount of each 2% holdback to the account of the purchasing franchised dealer, then remits to the franchised dealer at the end of the year the aggregate amount of his 2% holdback account.

(b) The 2% holdback is not made available to Class Automobile Retailers, who are in competition with franchised dealers in the marketing of new automobiles.

(c) By not making the 2% holdback available to Class Automobile Retailers on proportionately equal terms, the Defendant Manufacturers are committing a price discrimination in violation of Section 2(a) of the Clayton Act, causing substantial losses to the Plaintiffs and other class members.

COUNT TWENTY-SIX

(PRICE DISCRIMINATION - HOLDBACK AND FLEET REBATE COMBINATION)

198. As a twenty-sixth count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count twenty-six as the "Defendant Manufacturers"), Plaintiff Nabcor and the Plaintiffs described above in paragraphs 9-15, on behalf of themselves and all other Nabcor franchisees, all purchasers under a fleet certificate number (defined above in paragraph 97) who are not also franchised dealers, and all franchised dealers (defined above in paragraph 99) who are not purchasers under a fleet certificate number (hereinafter collectively referred to in count twenty-six as the "Class Automobile Retailers"), repeat and reallege all that is alleged in paragraphs 1-3, 6-15, 96-103, 166-168 and 196-197, and in addition thereto allege:

(a) The 2% holdback, defined above in paragraph 197(a), and the fleet rebate, defined above in paragraph 196(a), are granted by the Defendant Manufacturers simultaneously to franchised dealers who are also purchasers (directly or through a subsidiary) under a fleet certificate number.

(b) The combined holdback and fleet rebate amounts to a combined discount from the wholesale price of new automobiles ranging from 3-7%, as to fleet purchases made (directly or through a subsidiary) by a person who is also a franchised dealer.

(c) An effect is to discriminate against Nabcor and its franchisees in an amount approximating 3-7% (the 2% holdback plus the 1-5% fleet rebate).

(d) An effect is to discriminate against franchised dealers who are not also purchasers under a fleet certificate number in an amount approximating 1-5% (the fleet rebate).

(e) An effect is to discriminate against fleet purchasers who are not also franchised dealers, in an amount approximating 2% (the holdback).

(f) Class Automobile Retailers are in competition with franchised dealers who are also purchasers (directly or through a subsidiary) under a fleet certificate number.

(g) By not making the full 3-7% combined holdback and fleet rebate available to Class Automobile Retailers on proportionately equal terms, the Defendant Manufacturers are committing a price discrimination in violation of Section 2(a) of the Clayton Act, causing substantial losses to the Plaintiffs and other class members.

COUNT TWENTY-SEVEN

(SERVICE DISCRIMINATION - MANUFACTURER-DIRECTED FLEET BUSINESS)

199. As a twenty-seventh count of this Complaint, against General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation (hereinafter collectively referred to in this count twenty-seven as the "Defendant Manufacturers"), Plaintiff Nabcor and the Plaintiffs described above in paragraphs 9-15, on behalf of themselves and all other Nabcor franchisees, and all franchised dealers (defined above in paragraph 99) and purchasers under a fleet certificate number (defined above in paragraph 97) who are not beneficiaries of the service discrimination described below (hereinafter collectively referred to in this count twenty-seven as the "Class Automobile Retailers"), repeat and reallege all that is alleged in paragraphs 1-3, 6-15, 96-103 and 166-168, and in addition thereto allege:

(a) Each of the Defendant Manufacturers trains and/or maintains at its own expense a staff of fleet salesmen who develop fleet automobile purchases and seek new fleet purchasers of automobiles.

(b) Fleet purchases developed by a Defendant Manufacturer's salesmen are directed to certain franchised dealers (the "favored franchised dealers") who often obtain this highly profitable business for reasons other than the location, quality of service or price of the favored franchised dealer.

(c) This manufacturer-developed fleet sales business is not made available to Class Automobile Retailers, who are or would like to be in competition with the favored franchised dealer for fleet business of any kind.

(d) By not making manufacturer-developed fleet business available to Class Automobile Retailers on proportionately equal terms, the Defendant Manufacturers are committing a service discrimination in violation of Section 2(e) of the Clayton Act, causing substantial losses to the Plaintiffs and other class members.

PRAYER

WHEREFORE, the Plaintiffs designated, respectively, in each of counts one through twenty-seven of this Complaint pray:

As to Counts One through Three

1. That the herein alleged conspiracy or combination in restraint of trade, monopoly or attempt, conspiracy or combination to monopolize among the Conspiracy Defendants and Co-Conspirators designated therein be adjudged and decreed to be in violation of Sections 1-3 of the Sherman Act (15 U.S.C. Sections 1-3).

2. That the amount of damages Plaintiff Nabcor, the Class Plaintiffs and the class or sub-classes they represent have sustained by reason of the unlawful acts of the Conspiracy Defendants, which aggregate amount exceeds $100,000,000, but is not now definitely ascertainable and will be proved with certainty at the time of trial, be ascertained and assessed and the Conspiracy Defendants be ordered to pay to Plaintiff Nabcor, the Class Plaintiffs and the class or sub-classes they represent, in accordance with their respective interests, three (3) times the amount of such damages, and that such damages be apportioned to the extent any of the Conspiracy Defendants shall be held individually but not jointly liable.

3. That each of the Conspiracy Defendants and their agents, officers and employees and all persons combining with or acting in

concert with them or under their direction be perpetually restrained and enjoined from conspiring and combining to interfere with the free exercise by Plaintiff Nabcor, the Class Plaintiffs or the other Nabcor franchisees, represented as a class or sub-class by the Class Plaintiffs, of their respective businesses.

4. That the amount of damages Plaintiffs Frank Maiorana and Anthony Maiorana (the principal officers of Plaintiff Nabcor) have sustained by reason of the unlawful acts of the Conspiracy Defendants is $200,000 each, representing the loss of anticipated earnings for each as a result of the aforementioned violations of the antitrust laws, and that the Conspiracy Defendants be ordered to pay to Plaintiffs Frank Maiorana and Anthony Maiorana the sum of $600,000 apiece, representing three (3) times the amount of actual damages suffered by each, respectively.

As to Count Four

5. That Defendants General Motors Corporation and Ford Motor Company, as a result of their respective dealership acquisitions referred to in paragraph 111(B)(2)(c) of this Complaint alleged herein to substantially lessen competition or tend to create a monopoly, be adjudged and decreed to have violated Section 7 of the Clayton Act (15 U.S.C. Section 18).

6. That the amount of damages Plaintiff Nabcor, the Class Plaintiffs and the class or sub-classes they represent have sustained by reason of the unlawful acts of the Defendants, which aggregate amount exceeds $10,000,000, but is not now definitely ascertainable and will be proved with certainty at the time of trial, be ascertained and assessed and that each of the Defendants be individually ordered to pay to Plaintiff Nabcor, the Class Plaintiffs and the other Nabcor franchisees they represent, in accordance with their respective interests, three

(3) times the amount of such damages, and that such damages be apportioned between the Defendants as their respective liabilities may appear.

7. That Defendants General Motors Corporation and Ford Motor Company be required to divest themselves of the stock or assets of such acquired dealerships under such terms and conditions as this Court may prescribe as necessary to dissipate the effects of the unlawful acquisitions herein alleged or as may otherwise be required by law.

8. That Defendants General Motors Corporation and Ford Motor Company, its officers, agents and employees, be required to direct all dealerships acquired or to be acquired by the respective Defendants to supply reasonable quantities of new automobiles upon reasonable request to Plaintiff Nabcor, with or without a fleet certificate number, on terms no less favorable than granted by Defendants' dealerships during such period to Independent Fleet Purchasers and Leasing Companies.

As to Counts Five through Seven

9. That the herein alleged conspiracy or combination in restraint of trade, monopoly or attempt, conspiracy or combination to monopolize among the Defendants and Co-Conspirators designated therein be adjudged and decreed to be in violation of Sections 1-3 of the Sherman Act (15 U.S.C. Sections 1-3).

10. That the amount of damages Plaintiff Nabcor, the Class Plaintiffs and the class or sub-classes they represent have sustained by reason of the unlawful acts of the Defendants, which aggregate amount exceeds $50,028,000, but is not now definitely ascertainable and will be proved with certainty at the time of trial, be ascertained and assessed and that the Defendants be ordered to pay to Plaintiff Nabcor, the Class Plaintiffs and other Nabcor franchisees they represent, in accordance with their

respective interests, three (3) times the amount of such damages, and that such damages be apportioned to the extent any of the Defendants shall be held to be individually but not jointly liable.

11. That each of the Defendants and their agents, officers and employees be ordered to make a warranty program and related compensation available to Nabcor, on proportionately equal terms to the warranty programs made available to their respective franchised dealers and purchasers under fleet certificate numbers.

12. That the Defendants and their agents, officers and employees be ordered to ensure that franchised dealers of the Defend[illegible]ive customers of Nabcor, any Class Plaintiffs or any other Nabcor franchisees the same quality of service under warranty programs as regularly performed by such dealers for their other customers, or prevent any non-cooperating franchised dealer from offering or performing warranty work of any kind.

As to Count Eight

13. That Defendants National BBB and New York BBB be adjudged and decreed to have defamed Nabcor, and that the amount of damages Nabcor has sustained by reason of the defamatory acts of the Defendants, which amount exceeds $17,666,667, but is not now definitely ascertainable and will be proved with certainty at the time of trial, be ascertained and assessed and each of the Defendants National BBB and New York BBB be ordered to pay Nabcor the amount of such damages, and that such damages be apportioned between the Defendants if they shall be held to be individually but not jointly liable.

14. That each of the Defendants National BBB and New York BBB and their agents, officers and employees be ordered for the

represent be ordered to pay to Plaintiff Nabcor and each of the Class Plaintiffs and the other Direct Advertisers they represent, in accordance with their respective interests, three (3) times the amount of such damages, and that such damages be apportioned to the extent any of the Defendant Class Newspapers or other members of the Newspaper Class shall be held to be individually but not jointly liable.

17. That each of the Class Defendant Newspapers and other members of the Newspaper Class and their agents, officers and employees be ordered to pay or make Commissions (including discounts) available to Nabcor and each of the Class Plaintiffs and other Direct Advertisers on proportionately equal terms to the Commissions (including discounts) paid or made available to Co-Conspirator Advertising Agencies or, in the alternative, that each of the Class Defendant Newspapers and other members of the Newspaper Class be ordered to permanently cease granting Commissions (including discounts) to any advertising agencies whatsoever.

As to Counts Fourteen through Seventeen

18. That the price or service discriminations be adjudged and decreed to be in violation of Sections 2-3 of the Clayton Act (15 U.S.C. Sections 13-14).

19. That it be adjudged and decreed that the aggregate amounts of damages Plaintiff Nabcor and each of the Class Plaintiffs and other Nabcor franchisees they represent as a class have sustained by reason of the unlawful acts of the Defendant Manufacturers are:

(a) as to count fourteen ("Advertising Contribution Discrimination") the sum of $20,000,

(b) as to count fifteen ("Financing-Insurance Service and Allowance Discrimination") the sum of $120,000,

(c) as to count sixteen ("Warranty Discrimination") an aggregate sum exceeding $50,028,000 (as an alternative theory of recovery to the theories under counts five through seven), but is not now definitely ascertainable and will be proved with certainty at the time of trial, and

(d) as to count seventeen ("Fleet Program Discrimination") the sum of $140,000 (of which $90,000 has an alternative theory of recovery under count twenty-four, relating to fleet rebate discrimination, representing the amount of claimed damages allocable to Nabcor, the Class Plaintiffs and the other Nabcor franchisees as a class),

and that such aggregate amounts, including the amount in subparagraph (c) above, which is not now definitely ascertainable but will be proved with certainty at the time of trial, be ascertained and assessed and that each of the Defendant Manufacturers be individually ordered to pay to Plaintiff Nabcor and each of the Class Plaintiffs and other Nabcor franchisees they represent as a class, in accordance with their respective interests, three (3) times the amount of such damages, and that such damages be apportioned among the Defendant Manufacturers as their respective liabilities may appear.

20. That each of the Defendant Manufacturers and their agents, officers and employees be ordered to issue, upon request, a fleet certificate number to Nabcor, and grant to Nabcor the same rebates, discounts, allowances, services and other benefits on proportionately equal terms as are made available to other holders of fleet certificate numbers, or in the alternative, that each outstanding fleet certificate number be cancelled and no

such rebates, discounts, allowances, services or other benefits of any kind be made available to fleet purchasers which are not made available on proportionately equal terms to Nabcor.

As to Counts Eighteen through Twenty-Three

21. That the herein alleged conspiracy or combination in restraint of trade, monopoly or attempt, conspiracy or combination to monopolize among the Defendants and Co-Conspirators designated therein be adjudged and decreed to be in violation of Sections 1-3 of the Sherman Act (15 U.S.C. Sections 1-3); the price or service discriminations be adjudged and decreed to be in violation of Section 2-3 of the Clayton Act (15 U.S.C. Sections 13-14); and the method of adding the destination charges to factory-invoiced prices be adjudged and decreed a fraud or an intentional material misrepresentation to the purchasing new automobile retailer.

22. That it be adjudged and decreed that the aggregate amount of damages Plaintiff Nabcor and each of the Class Plaintiffs and other Class Automobile Retailers they represent as a class have sustained by reason of the unlawful acts of the Defendant Manufacturers is the "phantom" (or non-existent) and otherwise excessive destination charges billed to and paid by the Class Automobile Retailers, and that such aggregate amount, which is not now definitely ascertainable but will be proved with certainty at the time of trial, be ascertained and assessed and that each of the Defendant Manufacturers individually be ordered to pay to Plaintiff Nabcor and each of the Class Plaintiffs and other Class Automobile Retailers they represent, in accordance with their respective interests, three (3) times the amount of such damages (except as to count twenty-three, wherein only actual damages are being claimed), and that such damages be

apportioned to the extent any of the Defendant Manufacturers shall be held to be individually but not jointly liable.

23. That each of the Defendant Manufacturers and their agents, officers and employees be ordered to eliminate from all invoices to Class Automobile Retailers any and all "phantom" or otherwise excessive destination charges, and otherwise prepare invoices so that destination charges be either entirely absorbed by a Defendant Manufacturer or billed in an amount equal to the actual costs incurred in transporting a given automobile (including a reasonable profit on transportation facilities owned by the Defendant Manufacturer).

As to Counts Twenty-Four through Twenty-Seven

24. That the price or service discriminations be adjudged and decreed to be in violation of Section 2 of the Clayton Act (15 U.S.C. Section 13).

25. That it be adjudged and decreed that the aggregate amounts of damages Plaintiff Nabcor and each of the Class Plaintiffs and other Nabcor franchisees they represent as a class have sustained by reason of the unlawful acts of the Defendant Manufacturers are:

(a) as to count twenty-four ("Price Discrimination - Fleet Rebate") the sum of $90,000,

(b) as to count twenty-five ("Price Discrimination - 2% Holdback") the sum of $60,000,

(c) as to count twenty-six ("Price Discrimination - Holdback and Fleet Rebate Combination") the sum of $150,000 (as an alternative request for recovery from the requests under counts twenty-four and twenty-five), and

(d) as to count twenty-seven ("Service Discrimination - Manufacturer-Directed Fleet Business") the aggregate sum which is not now definitely ascertainable but will be proved with certainty at the time of trial,

and that such aggregate amounts, including the amount in subparagraph (d) above, which is not now definitely ascertainable but will be proved with certainty at the time of trial, be ascertained and assessed and each of the Defendant Manufacturers be individually ordered to pay to Plaintiff Nabcor and each of the Class Plaintiffs and other Nabcor franchisees they represent as a class, in accordance with their respective interests, three (3) times the amount of such damages, and that such damages be apportioned among the Defendant Manufacturers as their respective liabilities may appear.

26. That it be adjudged and decreed that the aggregate amounts of damages the remaining Class Automobile Retailers (not included in paragraph 25 above) have sustained by reason of the unlawful acts of the Defendant Manufacturers, which amounts are not now definitely ascertainable but will be proved with certainty at the time of trial, be ascertained and assessed and that each of the Defendant Manufacturers be individually ordered to pay to each of such Class Automobile Retailers represented as a class, in accordance with their respective interests, three (3) times the amount of such damages, and that such damages be apportioned among the Defendant Manufacturers as their respective liabilities may appear.

27. That each of the Defendant Manufacturers and their agents, officers and employees be ordered to grant to Nabcor, and all other Class Automobile Retailers the same rebates, discounts, allowances, services and other benefits on pro-

portionately equal terms or, in the alternative, that no such rebates, discounts, allowances, services or other benefits of any kind be made available to any Class Automobile Retailers.

As to All Twenty-Seven Counts

28. That Plaintiffs recover their costs and disbursements herein, and that this Court award reasonable attorneys' fees in accordance with Section 4 of the Clayton Act (15 U.S.C. Section 15).

29. That Plaintiffs, on behalf of themselves and as desinated representatives of the classes and sub-classes described in the respective counts, have such other and further relief as this Court may deem proper.

Jury Demand

Please take notice that Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure of all issues triable by right by a jury.

By Carl E. Person
Attorney for Plaintif.

Carl E. Person
150 East 61st Street
New York, N.Y. 10021

(212) 758-6248

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, : 70 Civ. 5421A (TPG)

-against- : ANSWER OF DEFENDANT GENERAL MOTORS CORPORATION

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

---------------------------------------x

Defendant General Motors Corporation ("GM") by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison, for its answer to the complaint:

FIRST DEFENSE

1. Denies each and every allegation contained in paragraph 1 of the complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations with respect to persons other than GM contained in paragraph 2 of the complaint and denies each and every allegation thereof with respect to GM, except admits that GM is qualified to do business in the State of New York and does business and has one or more offices in the Southern District of New York.

3. Denies each and every allegation contained in paragraph 3 of the complaint, except admits that a part of the interstate trade and commerce described in paragraph 101 of the complaint is carried on in the Southern District of New York.

4. Denies each and every allegation contained in paragraphs 4 and 5 of the complaint, except admits that plaintiffs made and the Court rejected the claims there alleged.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 6 of the complaint and denies each and every allegation contained in the remaining sentences of paragraph 6 of the complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15.

7. Denies each and every allegation contained in paragraph 16 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegation that "Frank Maiorana and Anthony Maiorana . . . have an aggregate of 42 years of experience in a variety of phases of the automobile business."

8. Denies each and every allegation contained in paragraph 17 of the complaint, except admits that GM is a corporation organized and existing under and by virtue of the laws of the State of Delaware and is engaged in the business, among others, of manufacturing automobiles.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 18 through 88 of the complaint, except admits (a) that Bob Bain Chevrolet, Inc., Bano Buick, Inc., Bates Pontiac Corp., Paul Batt Buick, Inc., Glen Campbell Chevrolet, Inc., Curry Chevrolet, Inc., Kem Dengler Chevrolet-Oldsmobile, Inc., Hallman's Central Chevrolet Co., Inc., Hamister-Gillogly Chevrolet, Inc., Luby Chevrolet, Mark Buick Corp., Marty Motors Corporation, Paragon Oldsmobile, Inc., and Ruckle Pontiac Co., Inc. were each franchised GM automobile dealers during all or part of the period

from December 11, 1966 to and including December 10, 1970, (b) that Frederic G. Donner was chairman of the board of directors of GM from a date prior to December 11, 1966 to and including October 31, 1967, (c) that James M. Roche was president of GM from a date prior to December 11, 1966 to and including October 31, 1967 and was chairman of the board of directors of GM from November 1, 1967 to and including December 31, 1971, (d) that General Motors Acceptance Corporation ("GMAC") is a wholly owned subsidiary of GM and is organized and exists under and by virtue of the laws of the State of New York, and (e) that Midtown Chevrolet Pontiac was an unincorporated branch of the Chevrolet Motor Division of GM during all or part of the period from December 11, 1966 to and including December 10, 1970.

10. Denies each and every allegation contained in paragraph 89 of the complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the complaint, except (a) admits that Capitol Motors, Nathan Hale Buick, New Britain Buick, Ranger Chevrolet, Frank W. Diver, Rock Hill Pontiac, Union Park Pontiac, Tomlinson Cadillac, Harry B. Center, A. C. Chevrolet, Cerota Chevrolet-Oldsmobile, Chief Pontiac, Inc., Dave Cole Pontiac, Krouse-Foman Oldsmobile, Randolph Chevrolet, Rohrer Chevrolet, Block Pontiac, Degnan Chevrolet, Henry Faulkner, Kutner Buick, Norton Chevrolet, Pitcairn Oldsmobile, Pollino Buick-Pontiac, Matt Slap Chevrolet, Al Wilson Pontiac, and Wolfington Chevrolet were each franchised GM automobile dealers during all or part of the period from December 11, 1966 to and including December 10, 1970, and (b) denies that the persons designated in paragraph 90 of the complaint

as co-conspirator franchised dealers are or were in competition with Nabcor or with any of Nabcor's franchisees.

12. Denies each and every allegation contained in paragraphs 91 through 100 of the complaint, except admits that the terms defined therein are used in the complaint as defined in said paragraphs.

13. Denies each and every allegation contained in paragraph 101 of the complaint, except (a) denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein with respect to Ford, Chrysler Corporation and American Motors Corporation, (b) admits that during the 1969 automobile model year, GM manufactured over 4 million passenger cars and had in excess of 12,000 franchised dealers, at least one of which dealers was located in each state of the United States and in the District of Columbia, and (c) admits that GM franchised dealers sell new automobiles to consumers.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the complaint, except (a) admits that Nabcor is not franchised by GM to sell new GM automobiles and (b) denies that Nabcor and its franchisees, or any of them, have purchased any automobiles from franchised dealers for any purpose.

15. Denies each and every allegation contained in paragraph 103 of the complaint.

16. Denies each and every allegation contained in paragraph 104 of the complaint, except admits (a) that the businesses of franchised GM dealers are often valuable and (b) that franchised GM dealers often make substantial investments in their businesses, and denies knowledge or information sufficient to form

a belief as to the truth of the allegations of said paragraph insofar as they relate to manufacturers other than GM and dealers franchised by manufacturers other than GM.

17. Denies each and every allegation contained in paragraph 105 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations (a) with respect to manufacturers other than GM, and (b) that franchised dealers, or any of them, are pleased if the service department merely covers its out-of-pocket expenses without any contribution to overhead.

18. Denies each and every allegation contained in paragraphs 106, 107 and 108 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 108 that the dealer may look upon warranty work as a necessary evil.

19. Denies each and every allegation contained in paragraph 109 of the complaint.

20. Denies each and every allegation contained in paragraph 110 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence thereof.

21. Denies each and every allegation contained in paragraphs 111, 112A, 112B and 112C of the complaint insofar as they relate to GM, GMAC, Frederic G. Donner and James M. Roche, or any of them, and without limiting the generality of the foregoing, specifically denies that GM, GMAC, Frederic G. Donner and James M. Roche, or any of them, were parties to any conspiracy, and otherwise denies knowledge or information suffi-

cient to form a belief as to the truth of the allegations contained therein.

22. Denies each and every allegation contained in paragraphs 113 and 114 of the complaint, except repeats and realleges its responses to paragraphs 1 through 112C of the complaint.

23. States that count 4 of the complaint has been dismissed and that therefore no answer to the allegations contained in paragraph 115 of the complaint is required.

24. States that counts 5, 6 and 7 of the complaint have been dismissed and that therefore no answer to the allegations contained in paragraphs 116, 117 and 118 is required, but that if such answer were required, it would deny each and every allegation contained in said paragraphs, except repeat and reallege its responses to paragraphs 1 through 112 of the complaint.

25. States that it is not a party to counts 8 through 13 of the complaint and that therefore no answer to the allegations contained in paragraphs 119 through 134 of the complaint is required.

26. Denies each and every allegation contained in paragraph 135 of the complaint, except repeats and realleges its responses to paragraphs 1 through 6, 9 through 15, and 96 through 103 of the complaint.

27. Denies each and every allegation contained in paragraph 136 of the complaint, except admits that it is a corporation existing under and by virtue of the law of the State of Delaware.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 137, 138, 139 and 140 of the complaint, except admits that the term "Defendant Manufacturers" is used in counts 14 through 27 of the complaint as defined in paragraph 140 thereof.

29. Denies each and every allegation contained in paragraphs 141, 142, 143, 144 and 145 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein with respect to manufacturers other than GM.

30. States that count 15 of the complaint has been dismissed and that therefore no answer to the allegations contained in paragraphs 146 through 152 thereof is required.

31. States that count 16 of the complaint has been dismissed and that therefore no answer to the allegations contained in paragraphs 153 through 159 of the complaint is required.

32. Denies each and every allegation contained in paragraph 160 of the complaint, except repeats and realleges its responses to paragraphs 1 through 6, 9 through 15, 96 through 103, and 136 through 140 of the complaint.

33. Denies each and every allegation contained in paragraphs 161 and 162 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein with respect to manufacturers other than GM.

34. Denies each and every allegation contained in paragraph 163 of the complaint, except (a) admits that GM has

not granted Nabcor a fleet user certificate, (b) alleges that Nabcor has never met the qualifications therefor, and (c) denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein with respect to manufacturers other than GM.

35. Denies each and every allegation contained in paragraphs 164 and 165 of the complaint.

36. Denies each and every allegation contained in paragraph 166 of the complaint, except repeats and realleges its responses to paragraphs 1 through 3, 6 through 16, and 96 through 103 of the complaint.

37. Denies each and every allegation contained in paragraphs 167 and 168 of the complaint, except admits that plaintiffs make the claims there alleged and that said claims have been rejected by the Court.

38. Denies each and every allegation contained in paragraphs 169 through 173 of the complaint insofar as they relate to GM, and without limiting the generality of the foregoing, specifically denies that GM was a party to any conspiracy, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, except repeats and realleges its responses to paragraphs 9 through 15 of the complaint.

39. States that counts 21, 22 and 23 of the complaint have been dismissed and that therefore no answer is required to the allegations contained in paragraphs 174 through 178 of the complaint.

40. Denies each and every allegation contained in paragraphs 179 through 195 of the complaint.

41. Denies each and every allegation contained in paragraph 196 of the complaint, except (a) repeats and realleges its responses to paragraphs 1 through 3, 6 through 15, 96 through 103, and 166 through 168 of the complaint and (b) denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein with respect to manufacturers other than GM.

42. States that counts 25, 26 and 27 of the complaint have been dismissed and that therefore no answeris required to the allegations contained in paragraphs 197 through 199 of the complaint.

SECOND DEFENSE AS TO EACH COUNT

43. The complaint fails to state a claim against GM upon which relief may be granted.

THIRD DEFENSE AS TO EACH COUNT

44. The rights of action alleged in the complaint, or parts thereof, did not accrue within four years next before the commencement of this action and are therefore barred in whole or in part by the statute of limitations.

FOURTH DEFENSE AS TO COUNTS 1 THROUGH 7

45. The rights of action alleged in counts 1 through 7 of the complaint are barred in whole or in part by the First Amendment to the United States Constitution.

FIFTH DEFENSE AS TO COUNTS 3, 7, 14, 17, 20 AND 24

46. This Court lacks jurisdiction of the subject matter of the claims alleged in counts 3, 7, 14, 17, 20 and 24 of the complaint.

SIXTH DEFENSE AS TO COUNTS 14, 17 AND 24

47. Assuming that proof is made that there has been discrimination in price or services or facilities furnished as alleged in counts 14, 17 and 24 of the complaint, or any of them, any such lower price or furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

SEVENTH DEFENSE AS TO COUNTS 14, 17 AND 24

48. Assuming that proof is made that there has been discrimination in price as alleged in counts 14, 17 and 24 of the complaint, or any of them, the effect of any such lower price to any purchaser or purchasers, if any, was not substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either granted or knowingly received the benefit of such discrimination, or with customers of either of them.

WHEREFORE, defendant General Motors Corporation demands judgment dismissing the complaint as to it in its entirety and awarding to it and against the plaintiffs, jointly and severally, the costs and disbursements of this action.

Dated: December 13, 1974

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By ______________________
Martin Kleinbard
Attorneys for Defendant
General Motors Corporation (sued herein both in its own right and as Midtown Chevrolet, Inc.)
345 Park Avenue
New York, New York 10022
(212) 644-8000

Answer of Donner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-------------------------------------x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

-------------------------------------x

70 Civ. 5421A (TPG)

ANSWER OF DEFENDANT
FREDERIC G. DONNER
(sued herein as
Frederick G. Donner)

Defendant Frederic G. Donner (sued herein as Frederick G. Donner), by his attorneys, Paul, Weiss, Rifkind, Wharton & Garrison, for his answer to the complaint:

FIRST DEFENSE

1. Denies each and every allegation contained in paragraph 1 of the complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations with respect to persons other than Frederic G. Donner contained in paragraph 2 of the complaint and denies each and every allegation thereof with respect to him.

3. Denies each and every allegation contained in paragraph 3 of the complaint, except admits that a part of the interstate trade and commerce described in paragraph 101 of the complaint is carried on in the Southern District of New York.

4. Denies each and every allegation contained in paragraphs 4 and 5 of the complaint, except admits that plaintiffs made and the Court rejected the claims there alleged.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the

first sentence of paragraph 6 of the complaint and denies each and every allegation contained in the remaining sentences of paragraph 6 of the complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15.

7. Denies each and every allegation contained in paragraph 16 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegation that "Frank Maiorana and Anthony Maiorana . . . have an aggregate of 42 years of experience in a variety of phases of the automobile business."

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 17 and 20 through 88 of the complaint, except admits that General Motors Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware and is engaged in the business, among others, of manufacturing automobiles.

9. Denies each and every allegation contained in paragraphs 18 and 19 of the complaint, except admits that:

(a) Frederic G. Donner was chairman of the board of directors of General Motors Corporation during a period including that from December 11, 1966 to and including October 31, 1967,

(b) James M. Roche was president of General

Motors Corporation during a period including that from December 11, 1966 to and including October 31, 1967, and

(c) James M. Roche was chairman of the board of directors of General Motors Corporation during a period including that from November 1, 1967 to and including the date this action was commenced.

10. Denies each and every allegation contained in paragraph 89 of the complaint.

11. Denies each and every allegation contained in paragraph 90 of the complaint.

12. Denies each and every allegation contained in paragraphs 91 through 100 of the complaint, except admits that the terms defined therein are used in the complaint as defined in said paragraphs.

13. Denies each and every allegation contained in paragraph 101 of the complaint, except (a) denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein with respect to Ford, Chrysler Corporation and American Motors Corporation, (b) admits that during the 1969 automobile model year, GM manufactured over 4 million passenger cars and had in excess of 12,000 franchised dealers, at least one of which dealers was located in each state of the United States and in the District of Columbia, and (c) admits that GM franchised dealers sell new automobiles to consumers.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the complaint, except (a) admits that Nabcor is not franchised by GM to sell new GM automobiles and (b) denies that Nabcor and its franchisees, or any of them, have purchased any automobiles from franchised dealers for any purpose.

15. Denies each and every allegation contained in paragraph 103 of the complaint.

16. Denies each and every allegation contained in paragraph 104 of the complaint, except admits (a) that the businesses of franchised GM dealers are often valuable and (b) that franchised GM dealers often make substantial investments in their businesses, and denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph insofar as they relate to manufacturers other than GM and dealers franchised by manufacturers other than GM.

17. Denies each and every allegation contained in paragraph 105 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations (a) with respect to manufacturers other than GM, and (b) that franchised dealers, or any of them, are pleased if the service department merely covers its out-of-pocket expenses without any contribution to overhead.

18. Denies each and every allegation contained in paragraphs 106, 107 and 108 of the complaint, except denies

knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 108 that the dealer may look upon warranty work as a necessary evil.

19. Denies each and every allegation contained in paragraph 109 of the complaint.

20. Denies each and every allegation contained in paragraph 110 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence thereof.

21. Denies each and every allegation contained in paragraphs 111, 112A, 112B, and 112C of the complaint insofar as they relate to GM, GMAC, Frederic G. Donner and James M. Roche, or any of them, and without limiting the generality of the foregoing, specifically denies that GM, GMAC, Frederic G. Donner and James M. Roche, or any of them, were parties to any conspiracy, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

22. Denies each and every allegation contained in paragraphs 113 and 114 of the complaint, except repeats and realleges his responses to paragraphs 1 through 112C of the complaint.

23. States that he is not named as a party to counts 4 through 27 of the complaint and that therefore no answer to the allegations contained in paragraphs 115 through 199 is required.

SECOND DEFENSE TO EACH COUNT

24. The complaint fails to state a claim against Frederic G. Donner upon which relief may be granted.

THIRD DEFENSE TO EACH COUNT

25. The rights of action alleged in the complaint, or parts thereof, did not accrue within four years next before the commencement of this action and are therefore barred in whole or in part by the statute of limitations.

FOURTH DEFENSE TO EACH COUNT

26. The rights of action alleged in counts 1 through 3 of the complaint are barred in whole or in part by the First Amendment to the United States Constitution.

FIFTH DEFENSE TO COUNT 3

27. This Court lacks jurisdiction over the subject matter of the claim alleged in count 3 of the complaint.

WHEREFORE, defendant Frederic G. Donner demands judgment dismissing the complaint as to him in its entirety and awarding to him and against the plaintiffs, jointly and severally, the costs and disbursements of this action.

Dated: December 13, 1974

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By

Martin Kleinbard
Attorneys for Defendant Frederic G.
Donner (sued herein as Frederick
G. Donner)
345 Park Avenue
New York, New York 10022
(212) 644-8000

Answer of Roche

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

NATIONAL AUTO BROKERS CORP., et al., :
Plaintiffs, :
-against- :
GENERAL MOTORS CORPORATION, et al., :
Defendants. :

---------------------------------------x

70 Civ. 5421A (TPG)

ANSWER OF DEFENDANT JAMES M. ROCHE (sued herein as James P. Roche)

Defendant James M. Roche (sued herein as James P. Roche), by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison, for its answer to the complaint:

FIRST DEFENSE

1. Denies each and every allegation contained in paragraph 1 of the complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations with respect to persons other than James M. Roche contained in paragraph 2 of the complaint, except denies each and every allegation thereof with respect to him.

3. Denies each and every allegation contained in paragraph 3 of the complaint, except admits that a part of the interstate trade and commerce described in paragraph 101 of the complaint is carried on in the Southern District of New York.

4. Denies each and every allegation contained in paragraphs 4 and 5 of the complaint, except admits that plaintiffs made and the Court rejected the claims there alleged.

5. Denies knowledge or information sufficient to

form a belief as to the truth of the allegations contained in the first sentence of paragraph 6 of the complaint and denies each and every allegation contained in the remaining sentences of paragraph 6 of the complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15.

7. Denies each and every allegation contained in paragraph 16 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegation that "Frank Maiorana and Anthony Maiorana . . . have an aggregate of 42 years of experience in a variety of pahses of the automobile business."

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 17 and 20 through 88 of the complaint, except admits that General Motors Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware and is engaged in the business, among others, of manufacturing automobiles.

9. Denies each and every allegation contained in paragraphs 18 and 19 of the complaint, except admits that

(a) Frederic G. Donner was chairman of the board of directors of General Motors Corporation during a period including that from December 1, 1966 to and including October 31, 1967,

(b) James M. Roche was president of General Motors Corporation during a period including that from December 11, 1966 to and including October 31, 1967, and

(c) James M. Roche was chairman of the board of directors of General Motors Corporation during a period including that from November 1, 1967 to and including the date this action was commenced.

10. Denies each and every allegation contained in paragraph 89 of the complaint.

11. Denies each and every allegation contained in paragraph 90 of the complaint.

12. Denies each and every allegation contained in paragraphs 91 through 100 of the complaint, except admits that the terms defined therein are used in the complaint as defined in said paragraphs.

13. Denies each and every allegation contained in paragraph 101 of the complaint, except (a) denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein with respect to Ford, Chrysler Corporation and American Motors Corporation, (b) admits that during the 1969 automobile model year, GM manufactured over 4 million passenger cars and had in excess of 12,000 franchised dealers, at least one of which dealers was located in each state of the United States and in the District of Columbia, and (c) admits that GM franchised dealers sell new automobiles to consumers.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in

paragraph 102 of the complaint, except (a) admits that Nabcor is not franchised by GM to sell new GM automobiles and (b) denies that Nabcor and its franchisees, or any of them, have purchased any automobiles from franchised dealers for any purpose.

15. Denies each and every allegation contained in paragraph 103 of the complaint.

16. Denies each and every allegation contained in paragraph 104 of the complaint, except admits (a) that the businesses of franchised GM dealers are often valuable and (b) that franchised GM dealers often make substantial investments in their businesses, and denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph insofar as they relate to manufacturers other than GM and dealers franchised by manufacturers other than GM.

17. Denies each and every allegation contained in paragraph 105 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations (a) with respect to manufacturers other than GM, and (b) that franchised dealers, or any of them, are pleased if the service department merely covers its out-of-pocket expenses without any contribution to overhead.

18. Denies each and every allegation contained in paragraphs 106, 107 and 108 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 108 that the dealer may look upon warranty work as a necessary evil.

19. Denies each and every allegation contained in paragraph 109 of the complaint.

20. Denies each and every allegation contained in paragraph 110 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence thereof.

21. Denies each and every allegation contained in paragraphs 111, 112A, 112B and 112C of the complaint insofar as they relate to GM, GMAC, Frederic G. Donner and James M. Roche, or any of them, and without limiting the generality of the foregoing, specifically denies that GM, GMAC, Frederic G. Donner and James M. Roche, or any of them, were parties to any conspiracy, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

22. Denies each and every allegation contained in paragraphs 113 and 114 of the complaint, except repeats and realleges his responses to paragraphs 1 through 112C of the complaint.

23. States that he is not named as a party to counts 4 through 27 of the complaint and that therefore no answer to the allegations contained in paragraphs 115 through 199 is required.

SECOND DEFENSE TO EACH COUNT

24. The complaint fails to state a claim against James M. Roche upon which relief may be granted.

THIRD DEFENSE TO EACH COUNT

25. The rights of action alleged in the complaint, or parts thereof, did not accrue within four years next before

the commencement of this action and are therefore barred in whole or in part by the statute of limitations.

FOURTH DEFENSE TO EACH COUNT

26. Alleges that he does not reside, is not found, and does not have an agent within the Southern District of New York and did not reside, was not found, and did not have an agent within said District at the time this action was commenced.

27. Accordingly, the venue of this action is improper as to him.

FIFTH DEFENSE TO EACH COUNT

28. The rights of action alleged in counts 1 through 3 of the complaint are barred in whole or in part by the First Amendment to the United States Constitution.

SIXTH DEFENSE TO COUNT 3

29. This Court lacks jurisdiction over the subject matter of the claim alleged in count 3 of the complaint.

WHEREFORE, defendant James M. Roche demands judgment dismissing the complaint as to him in its entirety and awarding to him and against the plaintiffs, jointly and severally, the costs and disbursements of this action.

Dated: December 13, 1974

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
By Martin Kleinbard
Martin Kleinbard
Attorneys for Defendant James M. Roche
(sued herein as James P. Roche)
345 Park Avenue
New York, New York 10022
(212) 644-8000

Answer of Bain Chevrolet

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL AUTO BROKERS CORP., et al,
Plaintiffs,

-vs-

GENERAL MOTORS CORPORATION, et al.,
Defendants.

70 CIV.5421

ANSWER OF DEFENDANT
BOB BAIN CHEVROLET,
INC.

BOB BAIN CHEVROLET, INC., a defendant, by its attorneys, WILLIAMS, WILLIAMS, VOLGENAU & TISDALL, for its answer to the complaint, alleges upon information and belief:

FIRST DEFENSE

1. Denies each allegation of counts 1, 2 and 3 against, or relating to, BOB BAIN CHEVROLET, INC. but admits that it is a New York corporation with its office and principal place of business in Erie County, New York.

2. Denies knowledge or information sufficient to form a belief as to the allegations of counts 1, 2 and 3 against, or relating to, other defendants, alleged co-conspirators, or others.

3. Denies any knowledge or information sufficient to form a belief as to counts 4 through 27.

SECOND DEFENSE

4. The complaint fails to state a cause of action against BOB BAIN CHEVROLET, INC.

THIRD DEFENSE

5. The claims of plaintiffs are wholly or partially barred by Statutes of Limitations.

FOURTH DEFENSE

6. Plaintiffs have no standing to make claims against BOB BAIN CHEVROLET, INC.

WHEREFORE, defendant BOB BAIN CHEVROLET, INC. demands judgment dismissing the complaint, together with costs and disbursements.

WILLIAMS, WILLIAMS, VOLGENAU & TISDALL

By: ______________________
Partner

Attorneys for BOB BAIN CHEVROLET, INC.
1200 Genesee Building
Buffalo, New York 14202

Answer of Batt Buick

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL AUTO BROKERS CORPORATION, et al.

Plaintiffs

vs.

GENERAL MOTORS CORPORATION, et al.

Defendants

ANSWER

DEFENDANT PAUL BATT BUICK, INC.

70 Civ. 5421

PAUL BATT BUICK, INC., one of the defendants herein, by its attorneys, Brennan, Callahan, Tesseyman, Zelman & Runfola for its answer to the complaint herein, alleges:

1. Admits that it is a New York corporation with principal place of business in Lancaster, New York and is a franchised automobile dealer.

First Defense

2. Denies having any knowledge or information sufficient to form a belief as to those allegations of complaint dealing with the other named defendants and co-conspirators.

3. Denies each and every other allegation of the complaint dealing with the defendant PAUL BATT BUICK, INC.

Second Defense

4. The plaintiffs, by their complaint, have failed to state a claim against the defendant PAUL BATT BUICK, INC. upon which any relief can be granted.

WHEREFORE, the defendant PAUL BATT BUICK, INC. demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Brennan, Callahan, Tesseyman,
Zelman & Runfola

By: Ross L. Runfola
ROSS L. RUNFOLA
Attorneys for Defendant PAUL BATT
BUICK, INC.
1360 Statler Hilton, Buffalo, NY 14202
Tel. (716) 853-5700

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL AUTO BROKERS CORP., et al
Plaintiffs

-vs-

GENERAL MOTORS CORPORATION, et al
Defendants

70 Civ. 5421

ANSWER OR
GLEN CAMPBELL CHEVROLET, INC.

Defendant Glen Campbell Chevrolet, Inc., by its attorneys Borins, Halpern, Snitzer, Levy, Fradin & Loonsk, for its answer to those portions of the complaint which refer to it, being Counts One, Two and Three:

FIRST DEFENSE

1. Denies each and every allegation made against or with respect to it, except that it admits that it is incorporated in and pursuant to the laws of the State of New York and has its principal office and place of business within the County of Erie and State of New York.

2. Denies that it has any knowledge or information sufficient to form a belief as to each and every allegation made against or with respect to the other defendants and the alleged co-conspirators.

SECOND DEFENSE

3. Plaintiffs lack standing to assert the claims made in the complaint.

THIRD DEFENSE

4. The plaintiffs' claims and the claim of any plaintiff-class member are barred in whole or in part by the applicable Statute of Limitations.

FOURTH DEFENSE

5. This claim cannot properly be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

WHEREFORE, the defendant Glen Campbell Chevrolet, Inc. demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

DATED: Buffalo, New York
May 7th, 1973

BORINS, HALPERN, SNITZER,
LEVY, FRADIN & LOONSK

By Isadore Snitzer
Isadore Snitzer, a member of the Firm
Attorneys for Defendant
700 Hotel Statler-Hilton
Buffalo, New York 14202

Answer of Hamister-Gillogly Chevrolet

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL AUTO BROKERS CORP., et al.

Plaintiffs

-against-

GENERAL MOTORS CORPORATION, et al.

Defendants

70 CIV. 5421

ANSWER OF
HAMISTER-GILLOGLY
CHEVROLET, INC.

Defendant Hamister-Gillogly Chevrolet, Inc., by its attorneys Hetzelt, Watson, McGarvey & Hetzelt, for its answer to those portions of the complaint which refer to it, being Counts One, Two and Three:

FIRST DEFENSE

1. Denies each and every allegation made against or with respect to it, except that it admits that it is incorporated in and pursuant to the laws of the State of New York and has its principal office and place of business within the County of Erie and State of New York.

2. Denies that it has any knowledge or information sufficient to form a belief as to each and every allegation made against or with respect to the other defendants and the alleged co-conspirators.

SECOND DEFENSE

3. Plaintiffs lack standing to assert the claims made in the complaint.

THIRD DEFENSE

4. The plaintiffs' claims and the claim of any plaintiff-class

member are barred in whole or in part by the applicable Statute of Limitations.

FOURTH DEFENSE

5. This claim cannot properly be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

WHEREFORE, the defendant Hamister-Gillogly Chevrolet, Inc. demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: Buffalo, New York
May 3, 1973

HETZELT, WATSON, McGARVEY &
HETZELT

By____________________________________
A Member of the Firm
Attorneys for Defendant
Hamister-Gillogly Chevrolet, Inc.
1904 Liberty Bank Building
Buffalo, New York 14202

Answer of Paragon Oldsmobile

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL AUTO BROKERS CORP., et al.,

Plaintiffs,

-against-

GENERAL MOTORS CORPORATION, et al.,

Defendants.

70 CIV. 5421

ANSWER OF DEFENDANT, PARAGON OLDSMOBILE, INC.

The defendant, PARAGON OLDSMOBILE, INC., by its attorney, SIDNEY A. WEISBERG, for its Answer to those portions of the Complaint applicable to it, being Counts One, Two and Three:

FIRST DEFENSE

1. Denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs numbered 1 through 103, except admits that it is a New York Corporation, that is engaged in the business of a franchised dealer and that its principal place of business is located in Queens, New York.

2. Denies each and every allegation made against or with respect to it in Paragraphs numbered 104 through 112C.

FIRST AFFIRMATIVE DEFENSE

3. The Complaint fails to state any claim against this defendant upon which relief can be granted.

WHEREFORE, the defendant, PARAGON OLDSMOBILE, INC. demands Judgment Dismissing the Complaint herein as to it, together with the costs and disbursements of this action.

Dated: April 26th, 1973.

By

Attorney for Defendant
PARAGON OLDSMOBILE, INC.

Sidney A. Weisberg
10 East 40th Street
New York, N.Y. 10016

(212) 683-9100

Answer of"BADA"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL AUTO BROKERS CORP., et al.

Plaintiffs

-against-

GENERAL MOTORS CORPORATION, et al.

Defendants

70 CIV. 5421

ANSWER OF NIAGARA FRONTIER AUTOMOBILE DEALERS ASSOCIATION

Defendant Niagara Frontier Automobile Dealers Association by its attorneys Hetzelt, Watson, McGarvey & Hetzelt, for its answer to those portions of the complaint which refer to it, being Counts One, Two and Three:

FIRST DEFENSE

1. Denies each and every allegation made against or with respect to it, except that it admits that it is incorporated in and pursuant to the laws of the State of New York and has its principal office and place of business within the County of Erie and State of New York.

2. Denies that it has any knowledge or information sufficient to form a belief as to each and every allegation made against or with respect to the other defendants and the alleged co-conspirators.

SECOND DEFENSE

3. Plaintiffs lack standing to assert the claims made in the complaint.

THIRD DEFENSE

4. The plaintiffs' claims and the claim of any plaintiff-class

member are barred in whole or in part by the applicable Statute of Limitations.

FOURTH DEFENSE

5. This claim cannot properly be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

WHEREFORE the defendant Niagara Frontier Automobile Dealers Association demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: Buffalo, New York
May 4, 1973

HETZELT, WATSON, McGARVEY &
HETZELT

By______________________________
A Member of the Firm
Attorneys for Defendant
Niagara Frontier Automobile
Dealers Association
1904 Liberty Bank Building
Buffalo, New York 14202

Answer of "GMAC"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

--x

70 Civ. 5421A (TPG)

ANSWER OF
DEFENDANT GENERAL
MOTORS ACCEPTANCE
CORPORATION

Defendant General Motors Acceptance Corporation ("GMAC"), by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison, for its answer to the complaint:

FIRST DEFENSE

1. Denies each and every allegation contained in paragraph 1 of the complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint with respect to persons other than GMAC and denies each and every allegation thereof with respect to GMAC, except admits that GMAC is a corporation organized and existing under and by virtue of the laws of the State of New York and maintains one or more offices in the Southern District of New York.

3. Denies each and every allegation contained in paragraph 3 of the complaint.

4. Denies each and every allegation contained in paragraphs 4 and 5 of the complaint, except admits that plaintiffs made and the Court rejected the claims there alleged.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 6 of the complaint and denies each and every allegation contained in the remaining sentences of paragraph 6 of the complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15, thereof.

7. Denies each and every allegation contained in paragraph 16 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegation that "Frank Maiorana and Anthony Maiorana . . . have an aggregate of 42 years of experience in a variety of phases of the automobile business."

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 17 through 53 and 55 through 88 of the complaint, except admits (a) that General Motors Corporation ("GM") is organized and exists under and by virtue of the laws of the State of Delaware, (b) that Bob Bain Chevrolet, Inc., Bano Buick, Inc., Bates Pontiac Corp., Paul Batt Buick, Inc., Glen Campbell Chevrolet, Inc., Curry Chevrolet, Inc., Kem Dengler Chevrolet-Oldsmobile, Inc., Hallman's Central Chevrolet Co., Inc., Hamister-Gillogly Chevrolet, Inc., Luby Chevrolet, Mark Buick Corp., Marty Motors Corporation, Paragon Oldsmobile, Inc., and Ruckle Pontiac Co., Inc. were each franchised GM automobile dealers during all or part of the period from December 11, 1966 to and including December 10, 1970, (c) that Frederick G. Donner was chairman of the board of directors of GM from a date prior to December 11, 1966 to and including October 31, 1967,

(d) that James M. Roche was president of GM from a date prior to December 11, 1966 to and including October 31, 1967 and was chairman of the board of directors of GM from November 1, 1967 to and including December 31, 1971.

9. Denies each and every allegation contained in paragraph 54 of the complaint, except admits (a) that GMAC is a corporation organized and existing under and by virtue of the laws of the State of New York, (b) that GMAC is named as a defendant in this action, and (c) that the principal place of business of GMAC is located within the Southern District of New York.

10. Denies each and every allegation contained in paragraph 89 of the complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the complaint, except (a) admits that Capitol Motors, Nathan Hale Buick, New Britain Buick, Ranger Chevrolet, Frank W. Diver, Rock Hill Pontiac, Union Park Pontiac, Tomlinson Cadillac, Harry B. Center, A. C. Chevrolet, Cerota Chevrolet-Oldsmobile, Chief Pontiac, Inc., Dave Cole Pontiac, Krouse-Foman, Oldsmobile, Randolph Chevrolet, Rohrer Chevrolet, Block Pontiac, Degnan Chevrolet, Henry Faulkner, Kutner Buick, Norton Chevrolet, Pitcairn Oldsmobile, Pollino Buick-Pontiac, Matt Slap Chevrolet, Al Wilson Pontiac, and Wolfington Chevrolet were each franchised GM automobile dealers during all or part of the period from December 11, 1966 to and including December 10, 1970, and (b) denies that the persons designated in paragraph 90 of the complaint as co-conspirator franchised dealers are or were in competition with Nabcor or with any of Nabcor's franchisees.

12. Denies each and every allegation contained in paragraphs 91 through 100 of the complaint, except admits that the terms defined therein are used in the complaint as defined in said paragraphs.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 101 of the complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the complaint, except (a) admits that Nabcor is not franchised by GM to sell new GM automobiles and (b) denies that Nabcor and its franchisees, or any of them, have purchased any automobiles from franchised dealers for any purpose.

15. Denies each and every allegation contained in paragraph 103 of the complaint.

16. Denies each and every allegation contained in paragraph 104 of the complaint, except admits (a) that the businesses of franchised GM dealers are often valuable and (b) that franchised GM dealers often make substantial investments in their businesses, and denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph insofar as they relate to manufacturers other than GM and dealers franchised by manufacturers other than GM.

17. Denies each and every allegation contained in paragraph 105 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations (a) with respect to manufacturers other than GM, and

(b) that franchised dealers, or any of them, are pleased if the service department merely covers its out-of-pocket expenses without any contribution to overhead.

18. Denies each and every allegation contained in paragraphs 106, 107 and 108 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 108 that the dealer may look upon warranty work as a necessary evil.

19. Denies each and every allegation contained in paragraph 109 of the complaint.

20. Denies each and every allegation contained in paragraph 110 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence thereof.

21. Denies each and every allegation contained in paragraphs 111, 112A, 112B and 112C of the complaint insofar as they relate to GM, GMAC, Frederic G. Donner and James M. Roche, or any of them, and without limiting the generality of the foregoing, specifically denies that GM, GMAC, Frederic G. Donner and James M. Roche, or any of them, were parties to any conspiracy, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

22. Denies each and every allegation contained in paragraphs 113 and 114 of the complaint, except repeats and realleges its responses to paragraphs 1 through 112C of the complaint.

23. States that GMAC is not named as a party to counts 4 through 27 of the complaint and that therefore no answer to the allegations contained in paragraphs 115 through 199 is required.

SECOND DEFENSE TO EACH COUNT

24. The complaint fails to state a claim against GMAC upon which relief may be granted.

THIRD DEFENSE TO EACH COUNT

25. The rights of action alleged in the complaint, or parts thereof, did not accrue within four years next before the commencement of this action and are therefore barred in whole or in part by the statute of limitations.

FOURTH DEFENSE TO EACH COUNT

26. The rights of action alleged in counts 1 through 3 of the complaint are barred in whole or in part by the First Amendment to the United States Constitution.

FOURTH DEFENSE TO COUNT 3

27. This Court lacks jurisdiction over the subject matter of the claim alleged in count 3 of the complaint.

WHEREFORE, defendant General Motors Acceptance Corporation demands judgment dismissing the complaint as to it in its entirety and awarding to it and against the plaintiffs, jointly and severally, the costs and disbursements of this action.

Dated: December 13, 1974

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By______________________________
Martin Kleinbard
Attorneys for Defendant
General Motors Acceptance Corporation
345 Park Avenue
New York, New York 10022
(212) 644-8000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL AUTO BROKERS CORP., et al., :
70 Civ. 5421
Plaintiffs, :

-against- :
INTERROGATORIES ADDRESSED TO PLAINTIFFS BY C.I.T. FINANCIAL CORPORATION

GENERAL MOTORS CORPORATION, et al., :

Defendants. :
Set No. 1

--------------------------------------x

PLEASE TAKE NOTICE that defendant C.I.T. Financial Corporation ("C.I.T.") pursuant to Rule 33 of the Federal Rules of Civil Procedure, demands that plaintiffs answer under oath, within 30 days after service hereof, the following written interrogatories:

1. State separately and in detail the factual basis for the averments of paragraphs 111(A) and 112(A)(hh) of the complaint insofar as they relate to C.I.T., and, separately with respect to each such paragraph,

(a) identify the defendant or alleged co-conspirator with whom C.I.T. unlawfully combined or conspired;

(b) identify, by name and title, each officer, employee or agent of C.I.T. who participated in such combination or conspiracy;

(c) identify, by name and title, the person or persons who on behalf of other defendants and alleged co-conspirators combined or conspired with C.I.T.;

(d) set forth in detail each communication which occurred in connection with the alleged combining and conspiring which involved or related to C.I.T. and identify each person (by name, address, business or other affiliation and title) involved in, connected with or present at such communication and the manner, substance and date of such communication, specifying whether the communication was oral or written or both oral and written, if the communication was in writing identify the writing in a manner suitable for use as a description in a subpoena;

(e) identify any agreement, whether oral or in writing, relating to or resulting from any alleged combining or conspiring to which C.I.T. was a party or which relates to C.I.T. and for each such agreement set forth the substance thereof, the names of the persons participating in or present at the negotiation of such agreement and the date when and the place where the agreement was made, if the agreement was in writing, identify the writing in a manner suitable for use as a description in a subpoena;

(f) if there was no agreement among the defendants or with any alleged co-conspirators, set forth in detail all of the facts from which plaintiffs infer that C.I.T. combined and conspired with others;

(g) describe in detail each act, meeting, occurrence, transaction or other thing done, not done or attempted to be done (specifying the date thereof and identifying by name, address, business or other affiliation and title, each person, firm, business or other organization participating or involved therein or connected therewith directly or indirectly) which plaintiffs claim was part of or constituted, combining or conspiring by C.I.T.;

Niagara F.G. Interrogatories

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL AUTO BROKERS CORP., et al., :
Plaintiffs :
-vs- :
GENERAL MOTORS CORPORATION, et al., :
Defendants :

70 CIV. 5421

INTERROGATORIES
ADDRESSED TO PLAINTIFFS BY NIAGARA FALLS GAZETTE
Set No. 1

Defendant Niagara Falls Gazette requests, pursuant to Rule 33 of the Federal Rules of Civil Procedure, that each plaintiff separately answer the following interrogatories, in writing and under oath, within thirty days from the date of service hereof:

As used in these interrogatories, the following words and phrases shall be interpreted as defined in this paragraph:

A. The words "PLAINTIFF" and "PLAINTIFFS" shall mean the plaintiffs named in the complaint, the members of the classes which they allegedly represent in this action, the potential customers of any of them and the officers, agents, and employees of any of them.

B. The phrase "COMMUNICATION OR CONTACT" shall mean all documents of any kind whether written or printed, including but not limited to correspondence, memoranda, contracts, agreements, minutes, invoices, purchase orders, books, records, notices, photographs, advertisements and drafts of advertisements; all oral communications; any visual observation; and any other means by which individuals or corporations may communicate with or come in contact with one another.

C. The term "IDENTIFY AND DESCRIBE" shall mean:

1. - with respect to documents, to state the type of document, so that it may readily be identified (e.g., letter, memorandum, telegram, minutes, invoice, advertisement, etc.), its date, author, the persons who collaborated with the author in its preparation, the addressee and recipients of copies thereof, and its present location or custodian. If such document was, but is no longer, in your possession or subject to your control, state what disposition was made of it and the date of such disposition. With respect to the foregoing information relating to documents, each plaintiff may, in lieu of supplying such information, furnish copies thereof.

2. - with respect to oral communications and all other contacts, to state the name and address of each person who was party thereto, the date, place, means and substance thereof, and if there is any document recording, referring or relating to the subject matter of such oral communication, to identify and describe such document.

Interrogatories

1. With respect to the allegations of paragraph 111(B)(3) of the complaint:

a. Identify and describe each communication or contact by which it is claimed advertising was offered or sought by any plaintiff, and each communication or contact by which

(g) the identification of each document which reflects, in whole or in part, the information contained in your answers to subparagraphs (a) - (f) of this Interrogatory.

2. Describe the Nabcor franchise system including, without limitation, the business conducted and the services performed by:

(a) National Auto Brokers Corp.;
(b) Nabcor Master Brokers;
(c) Nabcor Area Brokers;
(d) Nabcor Brokers.

3. State whether you, or any other person acting on your behalf, has had any communication with any person allegedly a member of a purported class claimed to be represented in this action with respect to the matters alleged in this complaint including, without limitation, the Class Plaintiffs named in the complaint and, if so, state with respect to each such communication:

(a) the date and place thereof;
(b) whether it was oral or in writing;
(c) the identification thereof;
(d) the identification of each document which refers thereto.

4. State whether any claim, legal proceeding or complaint of any kind (referred to generally as "complaint") has been brought or made against you or any other person in connection with the grant, sale or other conveyance by you or each such other person of any right in or to a Nabcor franchise or the performance by you or such other person thereunder and, if so:

(a) identify each person against whom such a complaint has been brought or made;

(b) identify each such complainant;

(c) state the type of each such complaint (e.g., lawsuit; complaint to person granting, selling or otherwise conveying; complaint to governmental body);

(d) state the substance of each such complaint;

(e) state whether each such complaint was in writing or oral, and, if oral, identify each person who was present at the time each was made;

(f) state the date on which each such complaint was made;

(g) identify each document which is or refers to each such complaint;

(h) identify each person to whom each such complaint was made;

(i) state the disposition of each such complaint.

5. State whether any Nabcor franchisee has sought to cancel, terminate or rescind its Nabcor franchise agreement or to obtain the return of any consideration paid therefor by any means including, without limitation, the lawsuits referred to in ¶5(v)(B) of the complaint, and, if so, identify:

(a) each such franchisee;

(b) each document relating to each such instance;

(c) each person with knowledge of each such instance;

(d) the person from whom each such franchisee acquired its Nabcor franchise.

6. State whether any governmental body has investigated any element of your business or business practices or those of any Nabcor franchisee related to the grant, sale or other conveyance by you or any such franchisee of any right in or to a Nabcor franchise or the performance by you or any such franchisee thereunder and, if so:

(a) identify each person investigated;

(b) identify each such governmental body;

(c) state the date on which each such investigation began and, if any such investigation has been closed, the date on which it was closed;

(d) state the nature and subject matter of each such investigation;

(e) state whether the investigation was public;

(f) state whether testimony was taken and, if so, the identification of the witnesses;

(g) state the current status of each such investigation;

(h) state whether any documents were produced by you and, if so, the identification of each such document;

(i) identify each document which refers to each such investigation including, without limitation, all correspondence to and from each such governmental agency.

7. State whether the allegation that "Plaintiff Nabcor believes that none of the franchisees has the financial strength to maintain the class or sub-class actions by itself . . . ." (Complaint, ¶5(iii)(d)) includes any of the plaintiffs in this action and, of so, identify each such plaintiff and the factual basis for such allegation.

8. State whether you claim to represent any class in this action and, if so, state the count or counts with respect to which you claim to represent each such class.

9. With respect to each class you claim to represent herein, state:

(a) your claim and describe the respects in which it is similar to and different from the claims of the members of each class;

(b) whether you claim that you will adequately represent the interests of each class and the basis for that claim;

(c) each question of law which you claim is common to members of each class;

(d) each question of fact which you claim is common to members of each class.

10. State the "substantial amount of essential information . . . " which you allege in ¶5(v)(A) of the complaint is unknown to any of the plaintiffs herein other than yourself and the factual basis for your allegation that it is

15. State whether any claim, legal proceeding, complaint or criticism of any kind (collectively referred to as "complaints") has been brought or made against you or any Nabcor franchisee by any:

(a) independent franchised dealer;
(b) independent fleet purchaser;
(c) leasing company

as those terms are defined in the complaint.

16. If the answer to Interrogatory 15 or any portion thereof is in the affirmative:

(a) identify each such complainant;
(b) state the type of each such complaint (e.g., lawsuit, complaint to you, complaint to governmental body, criticism);
(c) state the substance of each such complaint;
(d) state whether each such complaint was in writing or oral and, if oral, identify each person who was present at the time each was made;
(e) state the date on which each such complaint was made;
(f) identify each document which is or refers to each such complaint;
(g) identify the person to whom each such complaint was made;
(h) state the disposition of each such complaint.

Schedule to Plaintiffs' Notice of Deposition

SCHEDULE

Name or Description of Officer or Director of defendant WILMINGTON TRUST COMPANY to be examined	Date and Time of Examination
1. W. D. Mertz, Director and Senior Vice President	November 17 3:30 P.M.
2. E. P. Fairman, Director, Senior Vice President and Senior Trust Officer	November 18 2:00 P.M.
3. A. Samuel Gray, Vice President	November 18
4. W. W. Geddes, Director, President and Chief Executive Officer	November 24 2:30 P.M.
5. Joseph M. Moran, Vice President	November 17, 18 or 24
6. Howard M. Phillips, Assistant Vice President	November 17, 18 or 24
7. James R. Robeson, Assistant Treasurer	November 17, 18 or 24
8. George W. Trivits, Assistant Treasurer	November 17, 18 or 24
9. George McLaughlin, Assistant Treasurer	November 17, 18 or 24
10. Peter G. Weber, Deputy Treasurer	November 17, 18 or 24
11. Andrew G. Terzes, Assistant Treasurer	(to be determined)

12. and by any officer(s) or managing agent(s) having knowledge or information not known to any of the officers and directors designated in ¶¶1-11 above relating to the following matters:

(a) all communications with or concerning National Auto Brokers Corp. ("Nabcor"), Nabcor of Southeastern Pennsylvania, Inc., Nabcor Delaware Auto Brokers, Inc., and any franchisees thereof;

(b) any communications with police, detective agencies (public or private), credit agencies or other administrative or enforcement agencies (including any grand juries) regarding Nabcor or any of its franchisees;

(c) policy and rules regarding loans to prospective purchasers of new automobiles;

(d) transactions and other communications with factory-owned factory-franchised and non-franchised automobile dealers, brokers and leasing companies, including capital loans, floor-planning, customer financing and accounts receivable financing;

(e) any communications with General Motors Corporation, Ford Motor Company, Chrysler Corporation and American Motors Corporation and subsidiaries thereof;

(f) ownership of defendant's outstanding capital shares;

(g) control of defendant and all communications regarding any possible or proposed change of control of defendant or affiliate News-Journal Company;

(h) business affiliations of each member of defendant's board of directors;

(i) affiliation of defendant with E. I. du Pont de Nemours & Co., News-Journal Company and General Motors Corporation;

(j) transactions in stock and other securities issued by General Motors Corporation or subsidiaries for the account of defendant or its clients, depositors or trustee accounts.

GM Notice of Deposition

A 190

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
SEP 14 11 03 '72
S.D. [illegible]

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NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, : 70 Civ. 5421

-against- : NOTICE OF DEPOSITION

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

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PLEASE TAKE NOTICE that, pursuant to Rules 30 and 45, Fed. R. Civ. P., the undersigned will take the depositions upon oral examination of the following witnesses at the offices of Schnader, Harrison, Segal & Lewis, 1719 Packard Building, Philadelphia, Pa. 19102, at the following times and dates:

Richard Mesirov 1209 West Wynnewood Road Wynnewood, Pa.	September 29, 1972 at 10 a.m.
Gerald Gerson 315-B Towne Place King of Prussia, Pa.	September 29, 1972 at 2 p.m.

You are invited to attend and cross-examine.

Dated: September 13, 1972
New York, New York

Yours, etc.,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Defendants
General Motors Corporation, General Motors Acceptance Corporation, Frederic G. Donner and James M. Roche

By Lewis A. Kaplan
Lewis A. Kaplan

345 Park Avenue
New York, New York 10022
Tel.: (212) 935-8000

334

SCHNADER, HARRISON, SEGAL & LEWIS
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Detroit, Michigan 48226

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SYLVIA VELAZQUEZ, being sworn, states:

That I am over 21 years of age, not a party or related to a party to this action and reside at 375 East 188th Street, Bronx, New York. That on the 13th day of September, 1972, I served the annexed Notice of Deposition on the within-listed attorneys for the parties to this action at the within-listed addresses, the addresses designated by them for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed prepaid wrapper by depositing same in a United States mail box.

Sylvia Velazquez
Sylvia Velazquez

Sworn to before me this
13th day of September, 1972.

Notary Public

LEWIS A. KAPLAN
Notary Public, State of New York
No. 60-7153700
Qualified in Westchester County
Commission Expires March 30, 1974

It is then, of course, admitted at a time later -- and it turns out to be January 11, 1968 -- this Buick was delivered. Mr. Strimple says so in his affidavit that he was called and told that the Buick is here. That was approximately January 11th of 1968.

We must again assume if Paul Batt called Strimple and said, "Your Buick is here," that there could not have been a conspiracy on that date as well, because if there had been, Batt would not have called him up and said, "Here is your Buick; come on and pick it up."

THE COURT: The only trouble, Mr. Runfola, is that Mr. Strimple, the president of the local broker, has come forward with an affidavit contradicting your version, and so who is right I won't attempt to judge, but it raises issues of fact.

He says, "I came as soon as I was told that the car was available, and when I got there I was first given a phony excuse that the car was sent back to Detroit because of a malfunction, and a few minutes later it was admitted to me that the Buffalo Zone of General Motors decreed that the car could not be sold because they didn't want it to go to a Nabcor broker."

Whether he is telling the truth -- That is the problem in summary judgments: you can't determine credibility on affidavits, so I don't know.

So I would say, although it is not a strong claim, there is some issue raised of conspiracy right then and there, an issue of fact as to whether your client was conspiring with General Motors at that instant.

He also has a statement that there were nine General Motors dealers in the Buffalo area who were refusing to sell to the Nabcor franchisee at about this time, late 1967 and early 1968. Again, that raises an issue of fact as to whether they were conspiring to gether or whether each were conspiring with General Motors.

Your affidavits really don't -- and I don't think they could -- negate that so conclusively as to permit summary judgment.

I am perfectly aware, as far are your client is concerned, the only allegation really is of a delay, a one-month delay in getting one car, but I think you are going to have to bear with the action. I am afraid that the claim is, and it could be a ground for anti-trust recovery if there was a conspiracy of the Buffalo dealers which resulted in delays or in failures to sell not only your fellow's Buick, but another fellow's Chevrolet and so forth and so on.

I just can't grant summary judgment. I think I have really analyzed the fact situation that you are presenting

BEST COPY AVAILABLE

about as well as I can see to do it.

MR. RUNFOLA: The reason I brought up the dates, your Honor, was to point out that if there was a conspiracy, as they allege, it was of a very short duration, from maybe the 11th of January to the 23rd of January. I think we then become --

THE COURT: You have the problem if someone joins a conspiracy, are they liable for what went before, and so forth.

MR. RUNFOLA: Correct.

We come, of course, to the other question, which I guess deals with the question of summary judgment, but the question whether, first of all, Mr. Strimple is a proper person

THE COURT: Where does that get us? I don't think I could, but if I threw Mr. Strimple out, there would be plenty of other plaintiffs to carry on, so that doesn't accomplish anything.

MR. RUNFOLA: I mention Strimple as being just a stockholder or officer of --

THE COURT: His company is a plaintiff, isn't it?

MR. RUNFOLA: Right.

Also, the question arises as to whether the damages that are now claimed are the proximate cause of any act that Batt may have caused if there was a conspiracy and whether these are all proper plaintiffs as far as the defendant Batt

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is concerned, whether Batt can properly be considered the cause of any injuries that may have occurred to a plaintiff in Philadelphia, Pennsylvania.

THE COURT: I think I was the one in my letter that asked about the question of damages. I don't think it was really raised in Batt's motion. We just have a general statement there is $100,000,000 in damages, which isn't very satisfactory, to say the least.

Again, right now, I just think none of these arguments persuade me to grant summary judgment. It is something that has not been explored sufficiently on this damage question. I think there is some law to a certain extent that a conspiracy which causes damages overall, the damages can be levied on each conspirator.

I am not prepared to say the limits on that or the boundaries, but it really hasn't been gone into enough on this motion.

MR. RUNFOLA: Let me say this:

In view of the Court's position on the motion for summary judgment, I would like to request that any motion that we make then be deferred so as not to precipitate the necessity of discovery proceedings that are going to throw the whole schedule off.

I apologize for the fact that perhaps I am the factor process of bringing on a motion to compel.

We also wish to depose the plaintiffs on this question.

THE COURT: This is just another illustration of the glacial way the case moves. I thought -- and maybe if I didn't make myself clear, I will try to do that now -- when there are discovery problems, I would like to know about them immediately, and I think, like most of the Judges on the individual assignment, I am available. Even if I have a trial, I can meet with counsel in the morning or the afternoon hours, at the end of the day, and take care of discovery problems, and there is no reason to have a written motion. An oral application on discovery is sufficient.

If it turns out that there are questions of law, questions of fact that you have to have affidavits and briefs on, we can do that, but usually there are not.

Maybe I didn't make that clear, but I would like to now.

I will try to take care of discovery questions very promptly and just by an appointment, coming up and seeing me.

MR. KAPLAN: The immediate discovery problem on this didn't crystallize until within the last two weeks, because the objections were not filled in until January, and we resolved some of the problems by discussion. We have been agreement provides that every member of that class buys their cars through Mr. Berson. There is a case brought --

THE COURT: Has the file folder been produced?

MR. KAPLAN: They have refused to produce it. These interrogatories seek to compel the production. They have a cardboard box which contains, as near as I can determine, a folder on every automobile order that was placed. There are approximately five hundred.

THE COURT: Can we simplify this by having all that material produced right now?

MR. KAPLAN: I think if they produce it they will answer Interrogatory Number 1. They are called deal folders, and they referred to them in a deposition in the case. That will solve the problem.

MR. PERSON: Your Honor, may I address myself to one point which may alleviate a lot of the discussion?

Mr. Kaplan is creating an argument, in effect, that there are a lot of series of sub-class potential or potential sub-classes by a variety of a great deal of illegal activities, which may or may not have been committed against two hundred different people.

What we would like to do is to focus on one point, that the franchisor was ruined in its business, which had the effect of destroying the franchisees in various ways.

The franchisee is dependent on the franchisor for a variety of services. By destroying the franchisor through a conspiracy, each member is affected, and a member of the class, at least, which I think would be a subject matter for a conditional determination. Later on, let us go into specifics and see if there are additional liabilities.

THE COURT: Certainly, what Mr. Kaplan says is important to him, and your argument is important to yourself, and on the face of it both arguments raise relevant points. But the problem we are trying to wrestle with is how to get the case moving and get past this rather artificial distinctio which has been the basis so far -- there is a clear distinctio between the class action issues and then the merits.

What Mr. Kaplan has demonstrated is that he needs facts; he needs facts about whether these two hundred franchis have any valid claims or not. He needs that to defend this lawsuit.

Whether you say it is defending against the class action motion or defending against the merits -- maybe it is both. But he needs, for whatever use, he has got to have discovery, and he has got to have the facts, and he really should have it pronto.

I don't want to act off the cuff here, but it does seem to me that the most important thing to do is to get for-insofar as some of these issues relating to the class are concerned.

What they are proposing is that they have partial class action discovery against plaintiffs only and that the plaintiffs do not have a chance to establish a prima facie case or near showing which may be required in that class action motion.

THE COURT: What discovery do you have to have of General Motors or Ford or Chrysler to support your class action motion?

MR. PERSON: In the event there's any inquiry relating to any ability to show that there may be a substantive issue, I'm deprived of that documentation to show transportation over charges, known as phantom freight, advertising contribution requirements and a massive number of other issues which do, in fact, relate to the class on which I need discovery since --

THE COURT: The word "massive" is just what bothers me. I'm dealing with this a little bit in theory because I don't have any specific discovery requests of yours before me that have been objected to.

MR. PERSON: I have interrogatories outstanding from November '71 which have been objected to, and I'm proposing to have conferences now to resolve the issues and move forward.

THE COURT: Let me ask you: Have you any other discovery demands outstanding except those interrogatories?

MR. PERSON: No. I have an additional set of interrogatories for the defendants to go further into the substantive areas, since previously there was a limitation upon substantive discovery.

THE COURT: Those you are going to serve, but have not yet served?

MR. PERSON: Yes. They are fairly well prepared, your Honor.

THE COURT: What other discovery do you contemplate? If you were able to proceed immediately with discovery on the merits, so to speak, or whatever, what other discovery --

MR. PERSON: At the outset it would be interrogatories and the documentation underlying the answers to the interrogatories.

THE COURT: Interrogatories include a request for documents?

MR. PERSON: Yes, sir.

THE COURT: All the documents relating to this and all the documents relating to that?

MR. PERSON: Yes, sir, unless we can arrive at stipulations somehow of fact, which I would be willing to consent to -- if we can stipulate to certain facts, it may ease the burden substantially since I don't think that many of the issues really have any factual dispute. It's really a question of ascertaining what the fact is insofar as certain charges are concerned.

Those are objectively determinable, I would suspect.

THE COURT: What the defendants have been saying at every hearing that I have had on this is that they believe that the individual positions of the members of the class, the 200 franchisees, brokers or sub-brokers, or whatever they are, they are unique or individual in ways that indicate that they may not be a proper class, that you may not be a proper representative, that they make no showing of any claims against them, that they haven't had these improper dealings directly against them, this thing and that.

It seems to me that there is a logic, and I'm sorry we didn't go forward on this two years ago, but I can't turn the clock back. Initially when you come forward and say you represent 200 companies or whatever the number is, there is a logic in exploring just how much real meat there is to that. How many of those claims are going to collapse right because the people don't want to sue? How many are going to collapse because they come in and say: We have never been denied any cars, we have never been denied any advertising? General Motors people say in good faith, I'm certain, that they believe that there are a lot of these 200 that will either disavow the claims or will make admissions that take them out of the case.

It seems to me before we have General Motors produce 10,000 documents and Ford another 10,000 and have their executives subjected to depositions and all, that we really ought to find out how many plaintiffs we have got.

MR. PERSON: Your Honor, may I --

THE COURT: I assume that General Motors is not destroying its files. We can take care of that.

MR. PERSON: Your Honor, there's one point which I don't think has been made well enough by me. I am at fault.

That is, that possibly we have a legal issue which requires determination, and that is a very simple legal issue, devoid of any factual matters whatever essentially. There are no factual matters in dispute.

That is, that when you attack a franchise or for the purpose of destroying the franchise system, does a franchisee who is dependent upon that franchise or for services have a cause of action?

That is an overall prevading issue which really is going to let this case move forward or it's going to cause severe problems --

THE COURT: I take it for granted there is a legal issue. You still want the facts about the individual franchisee and the individual broker and you want to know whether he wants to be a party to this suit. Frankly, I wish the depositions of all 200 had been taken.

I suggested at the last hearing that Mr. Kaplan -- this is up to him. I am not telling him what he ought to do.

I did suggest that maybe he should take depositions of a sampling of these people and begin to find out --

MR. PERSON: Your Honor, we don't --

THE COURT: Unless you can show that some witness at General Motors is losing his memory, I would like to hold off discovery of General Motors.

MR. PERSON: Your Honor, one witness died, a very important witness.

THE COURT: I say this: If you have an indication that you have to take a deposition because to preserve testimony, that is an entirely different matter. Just the general idea of the order of discovery, I don't want to prolong this. I think that we ought to have the much delayed discovery of these plaintiffs.

Let me look at this schedule and see.

(Pause.)

THE COURT: The period to March 30, what exactly do you contemplate doing in discovery?

MR. KLEINHARD: Your Honor, if I could just pick up the suggestion that you made long ago. We did examine some of the franchisees. For example, I will read just one question and answer from the deposition of a NABCOR franchisee, Mr. Mesirov:

"Q. Do you assert that you had any claim against General Motors Corporation connected with your business as a NABCOR franchisor?

"A. I have no claim."

Now, that's typical of the sort of thing that your Honor was referring to and that we are referring to.

THE COURT: Was he advised of his rights?

I assume that there were factual questions leading up to that.

MR. KLEINBARD: He was represented by individual counsel. The deposition is 170-odd pages. I am not going to read it.

We came away from that deposition, your Honor, feeling that we had ample support as with respect to the franchisee Mesirov, that he does not belong in the class --

THE COURT: How many franchisees did you depose?

MR. KAPLAN: Mesirov is the only one that we have deposed directly. We have also had the production from the plaintiffs of a number of depositions of franchisees which they have taken in the course of lawsuits brought against the plaintiffs by various franchisees on the ground of fraud and breech of the franchise agreements.

I don't know how many in aggregate there are offhand. I would say somewhere around 10.

MR. KLEINBARD: Of course, your Honor, I am waiting for this material before we depose the others.

Now that we get the material, we will take such depositions as we require during this very narrow period.

We are not talking here in the light of the history of this litigation of anything really worthy of can't have discovery on your motion. We may have a problem, a definition problem here, and we also may have a practical problem because I, quite seriously, do not want to get into all the General Motors evidence and documents until we find out more about these plaintiffs.

MR. PERSON: Your Honor, may I point out one of my problems?

The very rigid defense to the class action motion apparently is going to be made on the basis of the inability of certain franchisees to sell automobiles under the so-called NABCOR system.

To show that, which is what a lot of the interrogatories I think have been directed to, a lot of the discovery will be directed to, I really need to point out that the overriding problem has been an antitrust problem.

In order to defeat the issue that's being raised, I want to show that General Motors and the others conspired to eliminate their whole system which caused the real problem, not the occasional incident that the defendants are claiming caused an individual franchisee to go out of business.

THE COURT: Mr. Person, I can't try the conspiracy issue on a class action motion.

MR. PERSON: That's the issue.

THE COURT: A class action motion has got to be preliminary.

Now, the real thing that I think we are interested in on the class action motion is the position of the individuals, so called members of the class.

Now, that I think I have to get into and get into in some depth. As far as the existence or non-existence of the conspiracy at the other end of the line, at the defendants end of the line, if we have to try that really to any substantial degree on a class action motion, that just defeats the purpose.

The idea of a class action motion is that it will be a kind of preliminary thing.

The Federal Rule certainly implies that. Our District Rule implies that.

That means necessarily you don't try all the issues in the case to the nth degree. You make some kind of preliminary rulings as best you can and you go forward.

MR. PERSON: We are not trying to establish a class of people like at the dealer level who, for example, was refused advertising by the newspapers.

We are not trying to refine the class to that point. I agree every franchisee would separate into a separate claim at that level.

We are not really trying to establish what all of this class action discovery is heading for. We are trying to show that the disruption of the franchisor affected each and every one of the franchisees by a depravation of the services to which they were entitled by contract. That's the overall issue which we have.

THE COURT: That's the ultimate issue in the case.

MR. PERSON: That's correct, your Honor. That is the overriding issue.

THE COURT: You claim that there was a conspiracy that they deprived them of the services and benefits of one kind or another?

MR. PERSON: Yes, sir.

THE COURT: Maybe for the sake of the class action motion I am going to have to assume that there was. That is what you claim.

That is what we are going to try.

I have got to make some assumptions about that for the sake of a class action motion.

I don't try the ultimate conspiracy.

MR. PERSON: The other issues, though, really aren't important from our standpoint because --

THE COURT: At least on those the defendants have a clear right, it seems to me, to get into those issues and to do what they can with them; the position of the individual, so called, members of the class.

Maybe I'm wrong, but it seems to me there is a distinction between that kind of an issue, the position of the individual, so called, class member, and the issues relating to the ultimate conspiracy.

I say that we really will benefit by getting into the first type of issue now, and the second type of issue we can defer. It seems to me that's one way to make a little progress in the case, and that will be my guideline.

Within that guideline, whatever discovery you think you want to demand, go ahead and do it, and I will rule on the specific requests if they are objected to.

All right. I think we have done all we need to.

MR. KLEINBARD: Your Honor, as to the interrogatories that are objected to, do you want to set a date for when those three can be --

THE COURT: I am going to have you on that Rodgers case.

MR. KLEINBARD: Mr. Kaplan is going to argue the other application.

THE COURT: I would like to take that right me. And whatever I have not asked for other than this notice, he is not going to produce.

I grant that there may be a problem, I have no contrary facts, about the identification of documents that were or were not in the file. I will explore that on deposition. To the extent that the plaintiff is able to identify documents that were in the file, that are not being produced elsewhere, I am entitled to them under this notice.

Secondly, with respect to the claim of privilege, this notice contains fairly routine boilerplate, asking that with respect to every document as to which they claim privilege, we want to know the date of the author, and so forth, that we can test the claim of privilege at an appropriate point. That is fairly standard, as I am sure your Honor knows, and I think we are entitled to that much.

Finally, with respect to discussion of the somewhat inflammatory Bergelson transactions --

MR. PERSON: I am not finished with it.

THE COURT: I think we have to finish.

MR. PERSON: It is a very serious problem, your Honor. May I just say it very quickly, and I will do it as quickly as I can, and that is that the Mesirov law firm in Pennsylvania represents Ford Motor Company in an antitrust suit. The Mesirov lawsuit took a top hand from the legal division of Ford several years ago, and he is now in charge of that automatic radio suit against Ford Motor Company. This same law firm obtained a client, who is the nephew of the top partner in the firm, and this nephew had purchased a NABCOR franchise, turned around and brought suit against NABCOR shortly after without making any attempt to truly become a franchisee.

We have very strong suspicion that there is collusion on the part of Ford Motor Company and its counsel in Pennsylvania, particularly because the franchisee himself said that he was not aware that his uncle's firm represents the defendant Ford, and at the same time his firm had advised him that he had no claim against Ford. That is a material conflict of interest.

One further point is that Mr. Bergelson happens to be an intimate friend of one of the top partners of the same Mesirov law firm. We think that it stinks. The whole thing smells, in our opinion. There happens to be too much collusion that appears to exist as a result of all these coincidences.

MR. KAPLAN: Your Honor, I don't know precisely what the materiality of that all is, but I think I have to answer it, because as far as we are concerned the aroma is from the other side of the table.

THE COURT: Let us get back. What is it you

Plaintiffs' (1st) motion for
preliminary injunction

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

NATIONAL AUTO BROKERS CORP., et al., : 70 Civ. 5421 TPG

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

- -x

NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

SIRS:

PLEASE TAKE NOTICE, that upon the Complaint in this action and the annexed Affidavit of Frank Maiorana, sworn to March 4, 1973, plaintiff NATIONAL AUTO BROKERS CORP. ("Nabcor"), by its attorney, will move this Court before the Honorable Thomas P. Griesa, at a time and place to be designated by him at the United States Courthouse, Foley Square, New York, New York, for a preliminary injunction, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure enjoining defendant GENERAL MOTORS CORPORATION ("GM"), its subsidiaries, agents, servants, employees and attorneys and all persons in active concert and participation with GM, pending the final hearing and determination of this action, from

(1) continuing to refuse to issue a fleet certificate to Nabcor;

(2) continuing to require, as a condition for the issuance of a fleet certificate, (i) a minimum purchase, within a certain preceding period, of new automobiles; (ii) the use of the automobiles, for a minimum period of time; and (iii) that the applicant be in the business of renting or leasing (but not reselling) new automobiles, or be a user of the automobiles;

(3) denying to Nabcor the benefits received by holders of GM fleet certificates;

(4) directing or advising GM franchisees not to sell new cars to Nabcor on a fleet basis;

(5) advising GM franchisees, upon their inquiry, that Nabcor does not have a fleet certificate and that Nabcor does not qualify to purchase new automobiles from the GM franchisees on a "fleet" basis;

(6) refusing to advise GM franchisees, upon their inquiry, that they are free to sell new automobiles to Nabcor (i) without consulting GM, and (ii) at prices agreed upon between Nabcor and the GM franchisees;

(7) limiting wholesale sales by GM franchisees to purchasers who have been approved by GM (as evidenced by the issuance of a GM fleet certificate);

(8) refusing to allot or deliver new ''fleet'' automobiles ordered by GM franchisees to the extent the GM franchisees sold new automobiles to Nabcor in what were, between Nabcor and the GM franchisees, fleet transactions;

(9) refusing to make available to GM franchisees the requested supply of popular models of GM automobiles ordered by GM franchisees in connection with their sales at wholesale to fleet purchases by Nabcor and Nabcor franchisees, even though they do not have a GM fleet certificate;

(10) continuing the quota system underlying GM's fleet sales program to the extent used to cut back on the number of new cars to be delivered to a GM franchisee who sells new GM automobiles to Nabcor or any Nabcor franchisees;

(11) using its fleet sales program as a method of wholesale customer selection when all such selling at wholesale (except sales to the federal government) has been performed by and at the risk of GM dealers; and

(12) telling GM franchisees to which customers the GM franchisees are permitted or are not permitted to sell new automobiles, on a fleet or on a regular (non-fleet) basis;

on the grounds that:

(1) unless restrained by this Court defendant GM will continue to perform the acts referred to;

(2) such actions by defendant GM will result in irreparable injury, loss and damage to plaintiff Nabcor and Nabcor franchisees, as more particularly appears in the affidavit of Frank Maiorana attached hereto;

(3) the issuance of a preliminary injunction herein will not cause undue inconvenience or loss to defendant GM but will prevent irreparable injury to plaintiff Nabcor and Nabcor franchisees; and

(4) plaintiff Nabcor has no adequate remedy at law.

Plaintiff Nabcor further moves this Court that the trial of this action on the merits be advanced and consolidated with the hearing of this Motion for Preliminary Injunction. The grounds in support of consolidation are as follows: A substantial part of the evidence offered on plaintiff's Motion for Preliminary Injunction will be relevant to the merits and will be presented in such form as to qualify for admission at the trial proper. Such evidence includes evidence relating to (i) GM's repeated refusals to issue a fleet certificate to Nabcor; (ii) GM's repeated denials to Nabcor of benefits received by holders of GM fleet certificates; (iii) GM's repeated interference with Nabcor's sources of supply of new GM-manufactured automobiles; (iv) how GM's so-called ''fleet sales program'' operates as a restraint upon the right of GM franchisees to sell new GM automobiles to customers of their own choice (including Nabcor and Nabcor franchisees). Repetition of evidence will be avoided; no delay in the disposition of the Motion for Preliminary Injunction will result from consolidation; and the final disposition of the action will be expedited.

Dated: New York, New York
March 5, 1973

CARL E. PERSON

Attorney for Plaintiff National
Auto Brokers Corp.
Office & Post Office Address:
132 Nassau Street
New York, New York 10038

Tel. No. (212) 349-4616

TO: All Attorneys on Attached List.

11A. The interference by GM results from its fleet sales progra by which only certain categories of volume purchasers of new automobiles (rental companies such as Hertz and Avis, leasing companies, and volume users such as AT&T and municipal police forces) are permitted to deal with GM's exclusive distributors (GM dealers). This permission to deal with the GM dealers is evidenced by the grant of a "fleet certificate" or a "fleet certificate number" by GM, upon application for the certificate by a GM dealer or by the applicant itself.

By setting up conditions for the issuance of a fleet certificate, GM prevents its dealers from competing in the wholesale marketing of new automobiles purchased or to be purchased by them.

GM dealers call GM to inquire whether they may sell new cars to Nabcor, and GM's "Zone" (the factory representative for the dealer's marketing area) frequently advises inquiring dealers that they should not sell to Nabcor or Nabcor's franchisees.

As a result, Nabcor spends a disproportionate portion of its resources of time and money looking for, negotiating with and opening up new sources of supply. Nabcor wants to continue selling new automobiles to consumers -- at prices lower than the prices generally paid by retail car purchasers to GM's dealers spread at strategic intervals across the country. Because of such territorial spread, GM dealers are subject to minimal competition from other GM dealers in the same line of cars. The only substantial competition would be independent marketers such as Nabcor and its franchisees.

11B. Nabcor asks this Court to enjoin GM from further interference with Nabcor's attempts to purchase new automobiles from willing GM pending the outcome of this action. To deny this request is to sound the death knell for Nabcor, Nabcor's franchisees and other persons in the country who are in, or would like to enter, the business of marketing new automobiles supplied by willing GM dealers - the entities through whom the nation's automobile manufacturers market 100% of their output (to all persons other than the federal government).

As long as the retail prices charged by GM dealers are high enough to sustain this emerging secondary market of new-automobile retailers, persons will enter this secondary market until the primary retail prices are lowered to competitive levels, forcing GM dealers to become more efficient, until the efficiency of one market over the other is determined by competition, rather than by the dictates of one mammoth organization -- G.M.

The apparent inefficiency of the average GM dealer results from GM's insistence that its dealers have facilities suitable to GM. GM's reliance upon its dealers to fulfill GM's obligation to repair automobiles under new-car warranties forces dealers to invest in unwanted and unprofitable facilities, giving the dealer an overhead requiring higher markups on retail auto sales than Nabcor brokers charge, because of their inexpensive store-front nature of operations. Expensive repair facilities are not needed. Repairs can be done effectively by independent service centers, except for the manufacturers' insistence on having warranty work performed only by its dealers. Thus, the GM dealer incurs the expense of carrying expensive repair facilities for the privilege of marketing GM cars in his community without any substantial competition from others. The development of a secondary retail market the fleet rebate and, for such reason, Nabcor winds up paying more for its new-car purchases than the dealers through whom Nabcor places its orders. Persons buying through a broker are able, in many instances, to enjoy substantial savings in their purchases of new automobiles (but lesser savings, if any, on cars which are low-priced and stripped of extras, as to which even dealers are not able to make much of a profit).

11E. Nabcor is anxious through this motion for injunctive relief to obtain a status quo during the pendency of this action. The amount of money and time it will take to prosecute this action, as evidenced from the amounts spent already, makes it of the utmost importance, to avoid irreparability of damage, to have Nabcor be allowed to purchase new cars from willing dealers without interference from GM, to enable Nabcor to survive until the determination of this action. Nabcor is not being permitted to engage in the business for which it was formed, and upon which it is substantially dependent for revenues, including revenues derived from the sale of franchises in a going business. GM would not be harmed because GM is making more money from Nabcor's fleet purchases than GM obtains from fleet purchasers under a fleet certificate, and the grant of the injunction in its entirety or in part would not involve any losses to GM at the manufacturing end of its business, and the lowering of prices which can be expected from this Nabcor approach of marketing new automobiles can be expected to increase the overall demand for new automobiles of all makes and models, thereby benefiting GM, Nabcor, the public and the dealers who decide to modify their method of marketing automobiles.

12. On information and belief, GM issued a ''fleet certificate'' to various car rental and leasing companies (including companies doing a business of daily car rentals, short-term car leases and long-term car leases) and owners of automobile fleets pursuant to the application therefor made either directly by the rental or leasing company or fleet user or on behalf thereof by a GM franchisee or GM-owned retail outlet. See Exhibit B hereto for copies of letters from GM franchisees describing the requirements to obtain a fleet certificate from GM, including at various times:

(i) 20 or more new auto purchases in a 1-year period;

(ii) but no requirement to buy any more if certificate issued;

(iii) companies purchasing or leasing 10 or more vehicles in the current calendar year;

(iv) 20 cars purchased by company (any make, all purchased within a 12-month period; and

(v) purchased solely for use in rental or leasing (and, presumably, use by the owner).

13. On information and belief, fleet certificates ordinarily were not issued by GM, even when requested, unless a leasing company or fleet owner (i) had purchased 10 (or 20?) or more cars in the preceding 12 months or calendar year; (ii) was engaged in the business of leasing or renting cars (as distinguished from sale transactions) or was a fleet user (such as American Telephone & Telegraph, or Hertz); and (iii) had owned and used the minimum number of cars for a minimum period of time, perhaps 6 months or more.

GM REFUSALS TO ISSUE FLEET CERTIFICATE TO NABCOR

14. From 1966 to the present, Nabcor has obtained the agreement of approximately 40-50 GM franchisees and GM-owned retail outlets to supply New GM Automobiles to Nabcor. Approximately 30 of these GM franchisees and GM-owned retail outlets actually sold cars to Nabcor, and about 30 of them have refused to deal with Nabcor any further, on the alleged ground (stated to

affiant or other officer or employee of Nabcor) that Nabcor resells cars and therefore does not have a GM fleet certificate (or fleet certificate number).

15. The 30 or so GM franchisees and GM-owned retail outlets which originally had agreed to sell New GM Automobiles to Nabcor, but ultimately refused to deal with Nabcor, are listed in paragraph 41 below, starting at page 20, together with the stated reasons for the refusals to deal with Nabcor.

NABCOR'S COMPLAINTS TO GM ABOUT CONCERTED REFUSALS TO DEAL AND GM'S REPEATED REFUSALS TO ISSUE FLEET CERTIFICATE NUMBER TO NABCOR

16. On or about December 20, 1967, Frank Maiorana spoke with Edward P. Belcher, Staff Assistant, Office of Chairman of GM (see Exhibit C hereto, calling card of Mr. Belcher), and informed Mr. Belcher:

A. about various refusals to deal described at paragraph 41 below;

B. that the GM dealers told Nabcor they were not selling to Nabcor (even though they were anxious to do so);

C. that GM Zone managers and other personnel were telling GM dealers (who had been found at great expense to Nabcor), upon inquiry to GM's Zone by such dealers, that they should not sell to Nabcor because Nabcor had no fleet certificate or fleet certificate number and was reselling cars;

D. that various GM dealers had requested GM to issue a fleet certificate to Nabcor;

E. that GM repeatedly refused to do so;

F. that Dale Strimple, President of General Auto Sales & Leasing, Inc., was threatening to go to the Justice Department and that Frank Maiorana wanted to avoid a law suit if at all possible;

G. that the issuance of a fleet certificate to Nabcor could eliminate most of the problems; and

H. that if GM's policy was not to stop Nabcor from purchasing GM cars, GM should notify its Zone managers and other Zone personnel.

17. Mr. Belcher was very apologetic, saying that some of the Zone personnel were young and enthusiastic, and believed that only GM should be selling new cars and that it was not GM's policy to do this and that he would see what he could do to help Nabcor. Finally, Mr. Belcher (Assistant to Chairman of the Board James P. Roche) stated that Frank Maiorana should call him back in several days.

18. About 1-2 days later, Frank Maiorana called Mr. Belcher who said that he called Detroit Chevrolet Division which suggested that someone from the fleet department of GM should contact Frank Maiorana. Belcher said that a Mr. N. M. Karney (''Karney'') Regional Director, Fleet Section of GM, would contact Frank Maiorana

19. Within 1-2 days, Karney arrived at Nabcor's office in New York, located in the General Motors' Building (before Christmas of 1967 or New Year's day) and left his calling card in the door (see Exhibit D). Frank Maiorana was not there.

20. At the beginning of January, 1968, Karney took Frank Maiorana to what he called the Chevrolet Division in New York, and left another one of his calling cards with Frank Maiorana (see Exhibit E hereto). A meeting took place with Frank Maiorana, Karney and two men (unknown identities), who seemed to be more interested in getting information about the Nabcor System than in getting Nabcor a fleet certificate or certificate number. Nothing was resolved at this meeting.

21. Several days later, Frank Maiorana spoke with Karney by telephone and was advised that the fleet certificate request by Nabcor was denied by GM. (See Karney letter, Exhibit E hereto.)

22. Frank Maiorana had a second meeting with Belcher in Belcher's office, at which meeting Frank Maiorana said once again that Nabcor was in the business of selling new automobiles, but would be willing to lease 10 automobiles if that would help to get Nabcor a fleet certificate for use in its business of selling cars; and Belcher set up a meeting between Frank Maiorana and a Mr. Drury, ''head'' of GMAC, according to Mr. Belcher. A copy of notes bearing Mr. Drury's name, telephone number and employer are annexed hereto as Exhibit F.

23. In early January, 1968, Frank Maiorana called Belcher and said that Nabcor was still not getting any cars and Nabcor was going to take action. Belcher said he was going to call Detroit that day and Frank Maiorana should call him back. After several calls that Thursday by Frank Maiorana, Belcher said that Detroit would not issue a fleet certificate number to Nabcor. He refused to have GM write a letter to GM's Zone men explaining that he would uphold GM policies and that he would not do anythin about the GM Division's deviation from GM policy.

24. In early February, 1968, Frank Maiorana went to the Justice Department in Washington, D.C. to complain about GM's refusals to allow GM dealers to deal with Nabcor. (Earlier, in March, April or May of 1966, Frank Maiorana complained to the Justice Department in Philadelphia about the New York incidents. Also, in October or November, 1967, Dale Strimple complained to the Justice Department in Buffalo about the Buffalo incidents.) A copy of Nabcor's communications with the Justice Department is annexed hereto as Exhibit G.

REFERRAL BY GM TO GMAC FOR PURPOSE OF OBTAINING FLEET CERTIFICATE NUMBER FOR NABCOR

25. See paragraph 22 above.

26. On the same day Frank Maiorana had the second meeting with Belcher, Frank Maiorana met with a Mr. Drury in New York, General Motors Building, and told Mr. Drury that Nabcor would be willing to go into leasing (for the minimum number of cars only) if Nabcor could get a fleet certificate number; that (if necessary to obtain a fleet certificate for use in its business of selling new automobiles) Nabcor was willing to buy 10 or more cars for leasing purposes (a field in which Frank Maiorana already had expertise) provided GMAC would give Nabcor a line of credit for these 10 car purchases only. Affiant was trying to cooperate at Nabcor's expense to meet GM's apparent internal problems of how to prevent franchised dealers from causing problems if they should find out that non-franchised dealers can sell new GM cars at retail as well. Mr. Drury said Frank Maiorana had to see a Mr. De Simone, Fleet Manager of the Philadelphia Zone of GM. Nabcor did not initiate the contact with Mr. De Simone.

27. In January, 1968, Mr. De Simone and Mr. Spiece (Assistant Fleet Manager of the GM Chevrolet Zone in Philadelphia) dropped in unexpectedly to Nabcor's office at 101 Benson Manor, Jenkintown, Pennsylvania, and talked with Jack Snyder first. Shortly after, they were introduced to Anthony Maiorana (who jotted down their names on a piece of paper, a copy of which is annexed hereto as Exhibit H), then asked him a lot of questions about the Nabcor System and how many cars Nabcor had bought in the past year. They said Nabcor would have to show 25 cars in the company's name, for at least 6 months. Anthony Maiorana told them that title was taken in the customer's name because Nabcor was a new car dealer, registered as such in New York. Messrs. De Simone and Spiece told Jack Snyder that they knew Nabcor was acquiring cars from Matt Slap Chevrolet. The final result was that GM did not issue a fleet certificate to Nabcor, and all of affiant's efforts with Messrs. Belcher and Karney were wasted.

28. In early January, 1968, Frank Maiorana called Mr. Belcher (see paragraph 23 above).

29. On January 24, 1968, Henry Thomas of the Philadelphia branch of General Motors Acceptance Corporation (''GMAC'') called Nabcor and spoke with Anthony Maiorana, telling him that Nabcor must go through a GM dealer to get the requested lease credit line. The GM dealer had to request it of GMAC because the dealer had to guaranty payment to GMAC. (See copy of notes on telephone conversation with Mr. Thomas annexed hereto as Exhibit I).

30. Anthony Maiorana went to Matt Slap Chevrolet, Inc., Philadelphia, Pennsylvania, and spoke with Robert Sloane, General Manager, who was interested and requested financials from Nabcor and Frank Maiorana (and said that Frank Maiorana would be required to guaranty the lease payments personally, which was agreeable). The line of credit was to be for $25,000 and Frank Maiorana's net worth was approximately $200,000.

31. The request for Nabcor financing was sent in by Matt Slap to GMAC, and Anthony Maiorana was advised by Robert Sloane that GMAC turned down the request (between the end of January and the middle of March, 1968).

32. Robert Sloane liked the Nabcor proposal so much that Matt Slap sent the deal over to its bank (Central Penn National Bank) to try to get financing for Nabcor, but the deal was turned down.

33. Meanwhile, Frank Maiorana went to the Justice Department in Washington, D.C. (See paragraph 24 above.)

34. On March 28, 1966, Jack Snyder, general sales manager and Vice President of Nabcor, called Allan Goldstein, fleet manager of Matt Slap, and was advised that Nabcor had been refused the requested line of credit by GMAC because they knew that Nabcor was selling (not renting or leasing) cars and feared that Nabcor would sell the cars purchased for lease or rental. See copy of note by Jack Snyder of telephone conversation annexed hereto as Exhibit J.

AN ANALYSIS OF GM'S FLEET SALES PROGRAM

35. As a result of my experiences in the fleet area, detailed in part above, I can say with great understanding that GM's so-called ''fleet program'' is no more than a device by which GM controls the market for selling new GM automobiles even though it has approximately 12,000 GM dealers (in which GM has a substantial interest in GM dealers representing a substantial percentage of retail sales) with the theoretical legal right to compete in sales of all new cars manufactured by GM. The market dominated by GM with its ''fleet sales program'' is effective in:

A. CUSTOMER SELECTION AND APPROVAL - It requires that each GM dealer obtain the approval of GM before it is able to sell new cars to a customer on a ''fleet'' (i.e., discount) basis;

B. POWER TO DETERMINE WHO MAY GO INTO BUSINESS - It permits GM to place a capital requirement on the opportunity of any person entering into any business which depends on ownership of more than one car or truck;

C. POWER TO EXCLUDE COMPETITION - It has permitied GM and its subsidiary GMAC to refuse vehicle loans on equal terms to competing new companies (irrespective of net worth or credit rating) until they have shown by the purchase of 10-25 new cars (a capital commitment of $40,000-$125,000 usually) that they can compete and are competing without the need of any loans from GMAC, which artificially prevents people from entering into business and operates to protect large leasing companies from competition of newcomers to the field.

D. PRICE DISCRIMINATION - It has allowed GM to maintain a system of price discrimination in which ''fleet'' customers approved by GM through the grant of a ''fleet certificate'' are permitted to buy new GM automobiles at prices lower in all or most instances than the prices paid by GM's own franchisees, without any cost justification.

E. SERVICE DISCRIMINATION - It has allowed GM to direct fleet business (developed at GM's expense) to GM franchisees favored by it who do not have to compete for this directed fleet business (thereby keeping the favored dealers in line by giving them unearned profits).

F. CONCERTED REFUSALS TO DEAL AND GROUP BOYCOTTS - It has allowed GM to refuse the opportunity for its franchisees to sell on a fleet basis without GM's prior approval, which has the effect of a group boycott or concerted refusal to deal in each instance where GM denies an application for a fleet certificate submitted by any of its franchisees.

G. TERRITORIAL PROTECTION AND ALLOCATION - It has allowed GM to maintain a system of territorial protection and allocation for its own benefit where it maintains GM-owned retail outlets by preventing a non-franchised dealer from obtaining cars from willing franchised GM dealers for resale in whatever parts of the country the non-franchisee believes it would be profitable to operate in, thereby resulting in well-needed competition in non-competitive areas of the new-car market.

H. PRICE FIXING - VOLUME SALES - It has allowed GM to set a uniform price for volume sales of new GM automobiles, fixed at the manufacturer's wholesale price (plus an insignificant markup ranging up to about 1% of the wholesale price), which suggests that there is no profitable competition at the franchisee end of the fleet business, and that all of the profits are made at the manufacturer's end, where the number of effective competitors is possibly zero (or only 1 at most -- Ford).

I. - PRICE FIXING - RETAIL SALES - It has allowed GM to prevent non-franchised competition against its own retail outlets thereby allowing prices to non-fleet ("retail") purchasers to be maintained at prices higher than would prevail in a market where non-franchisees were offering new cars for sale.

J. PUTS MANUFACTURER INTO COMPETITION PER SE WITH ITS FRANCHISED DEALERS - It has allowed GM to have an interest in maintaining higher prices (hence lower sales) at the retail (non-fleet) segment of the market where the manufacturer's own interest as a manufacturer is adverse; as a manufacturer alone, GM would be interested in maximizing sales, but with its own interest in the ultimate sales price it has been active in promoting a method of marketing which operates against the legitimate interests of a manufacturer to maximize its sales in competition with the other manufacturers. To the extent a manufacturer is able to restrict its sales by design, it is evidence of the market domination it has in the manufacturing end of the market and suggests that the economy would be benefited if the manufacturer were required to remove itself as an influence in the marketing of the cars it manufactures.

K. PREVENTS FRANCHISED DEALERS FROM COMPETING IN THE SALE OF OTHER MAKES - It has allowed GM to prevent other automobile manufacturers from using the marketing skills of GM franchisees who may be willing to sell their automobiles but because of their inability to obtain fleet certificates from competing manufacturers are prevented from marketing these other makes, to the detriment of the GM franchisees, the other manufacturers and the public.

L. PREVENTS THE PUBLIC FROM PURCHASING NEW AUTOMOBILES ON THE SAME DISCOUNT BASIS AS FLEET PURCHASERS - It has allowed GM to prevent the public from purchasing cars from automobile brokers or non-franchised dealers on a discount basis, where the cost to the consumer in a competititive market would be less than the present prices paid by the public, and would be comparable to (although slightly higher than) the prices paid by volume purchasers, of new automobiles from GM on the so-called ''fleet basis''.

36. The holders of fleet certificates issued by GM have, in addition to the services and other benefits listed on the General Motors Fleet Users Certificate (see Exhibit A hereto) the following benefits and services which are not received by GM franchisees or by retail customers of GM franchisees:

A. an ability to purchase any quantity of GM automobiles without concern for quotas imposed upon GM franchisees with respect to certain non-fleet (i.e., retail) purchases;

B. an ability to market new GM automobiles (by long-term or short-term lease or rental arrangements) on a nationwide basis without any overtones of territorial restrictions or other restraints upon the fleet purchaser for resale (by rental or lease);

C. an ability to obtain warranty work on the GM automobiles on a nationwide basis from GM franchisees located through the country without any overtones of territorial restrictions or other restraints upon the fleet purchaser, unlike the situation of the retail purchaser who often is required as a practical matter to obtain warranty work from the same dealer from whom he purchased the new GM automobile, not by language in the warranty itself (unlike warranties of other automobile manufacturers) but because of the unwillingness of many GM franchised dealers to service GM automobiles they did not sell, which is understandable because they lose money (or make less money) on warranty work. (See Exhibit K hereto, copies of connection with this objective, GM reduces the amount of gross profit to the franchised dealer to a $10 bill per car in many instances, making only large volume fleet sales profitable. This eliminates smaller dealers with low volume fleet sales from participating profitably in the fleet sales business. Also, this allows GM to capture retail profits at the manufacturer's level, through an artificially high wholesale price and artificially low dealer price, making meaningful dealer participation improbable. Yet, this arrangement made Nabcor's fleet business highly desirable to many small dealers because there were little or no attributable sales solicitation costs (Nabcor was doing the soliciting) and none of Nabcor's sales had to be financed by the dealer.

IRREPARABLE INJURY TO NABCOR

37. Nabcor was founded in 1966 and has been attempting to establish a national system for the marketing of new automobiles of any United States make or model. Commencing shortly after inception of operations and continuing up to and including the present (see paragraphs 41(1)-41(33) above) GM has interfered with the Nabcor System. If this is allowed to continue without restraint the market domination of GM will be aided substantially by preventing Nabcor and its franchisees from competing in a lawful way, and wasting its limited resources of time and money in fighting off the illegal actions of GM which Nabcor is calling upon this Court to temporarily enjoin herein. GM has billions of dollars to use in warding off the competition of Nabcor if necessary, which cannot be matched even by the federal government, as evidenced by the failure of years of investigation to result in any change in GM's system of operations under its fleet sales program. A slight hope is the indictment of GM and Ford in the fleet discount price fixing matter, described in the clippings annexed

hereto as Exhibit L. To allow competition to succeed (or fail for that matter) on its own merits, it is urgent that this Court grant Nabcor's motion for a preliminary injunction to save a small company and its franchisees from total destruction by the largest manufacturing company in the world. The irreparability of injury to Nabcor and its franchisees is underscored by Nabcor's reduced sales, resulting from the tampering by GM and others with Nabcor's sources of supply of new automobiles. The interference with Nabcor's competitive marketing program should be preliminarily enjoined pending the outcome of this action. GM's activities have been inflicting and are continuing to inflict irreparable injury upon Nabcor and its franchisees, for which money will not be adequate relief; and Nabcor has no plain, speedy or adequate remedy at law, particularly if any trial in the matter is to be held perhaps 10 months from now.

38. The grant of a preliminary injunction against GM would not cause any harm to any lawful interests which GM may have, inasmuch as Nabcor is allowing the public to purchase new automobiles at prices lower than GM's distribution system has been able to maintain for retail purchasers, which lowering in retail prices should (i) stimulate an increased demand for the products of GM and the other automobile manufacturers; (ii) create a greater opportunity for new United States automobiles to be sold abroad; and (iii) increase employment in the United States as a result of the increased demand resulting from any lowering of automobile prices for the average new-car customer. The increase in demand for new automobiles should operate to increase the profitability of GM's enterprise at the manufacturing level, which is the only legitimate interest GM has in this matter.

39. The injunction is necessary to eliminate the implied threat of franchise cancellation which GM holds over the head of each of its franchisees, to keep them in line and prevent them from selling new cars to Nabcor in violation of GM's official or unofficial policy. To see how this implied threat does in fact cause GM franchisees to deal with non-franchisees, see Exhibit H hereto, in which a GM franchisee states, in part:

> ''It is a serious breach of franchise for a Chevrolet dealer to issue a Manufacturer's Certificate of Origin without proper ownership designation. It is also impossible for a dealership to ''jip'' cars out of their zone to retail customers. We will issue all Manufacturer's Certificates of Origin to NABCOR, Inc., since a corporation may buy automobiles for drivers on a nationwide basis without infringing on sales territories in other zones. I'm sure you can handle this arrangement ''technically''.
>
> ''We are very eager to build our fleet volume and have the experience and knowledge to handle a new growing organization like yours, expertly and profitably for all parties concerned. Please give the foregoing your immediate and careful consideration and advise me by return communication, whether these first steps meet with your corporation approval.''

40. The quotation from the foregoing letter means, in effect, that the GM franchisee believes that (i) it is improper for him to sell GM cars outside of the territory given to him for development; and (ii) the use of customers' names and addresses on reports to the manufacturer (GM) would disclose that the dealer is selling cars outside of his territory. Obviously the dealer wishes to build his fleet business and become big like Hertz and Avis, but he realizes that the road to success in this area is not open to him on terms which are competitive, and that it requires some degree of subterfuge, for which there is always the possibility of cancellation of the dealer's franchise for this reason or one of many others the manufacturer could devise if the need arises. Once again, we wish to point out the crying need for a preliminary injunction so that GM's own dealers can be free to operate their own businesses the way that benefits each of them, individually, and not solely from the standpoint of ''What is good for GM is good for the country''.

41. The 33 GM Franchisees and GM-owned retail outlets which originally had agreed to sell New GM Automobiles to Nabcor and subsequently refused to deal with Nabcor are listed below, together with information about the agreement and the stated reasons for the refusals to deal:

(1) Name and Address of GM Dealer: Colonial Cadillac, 1655 North Olden Avenue, Trenton, N.J.

Make of New GM Automobiles Sold: Cadillac

Date of Agreement: 3/15/66

Fleet Price: $450-$550 over factory invoice (i.e., over ''tissue''), based on time of year.

See Exhibit N

Has Nabcor Purchased at Least 1 Car from Dealer? Yes

Date of Termination of Agreement: 1/67, 4/71 and 2/73

Supplier's Reason for Termination:

In 1962, Frank Maiorana as principal of Allcrest Auto Leasing started buying new cars from Colonial under GM fleet certificate 4419. On March 15, 1966, Colonial agreed to sell Cadillacs to Nabcor, and President Robert Murray told Frank Maiorana he was applying to GM for a fleet certificate for Nabcor. By the end of 1966, Colonial had delivered several Cadillacs and had 30-35 Cadillacs on order for Nabcor. In August-September, 1966 Robert Murray still had not obtained a fleet number for Nabcor and reported to Frank Maiorana that GM denied Nabcor a fleet number, but that he would continue to sell to Nabcor. By December, 1966, and in January, 1967 Robert Murry said that because Nabcor had no fleet number Colonial could not get extra Cadillacs from the factory and therefore Colonial could not give Nabcor any Cadillacs. Frank Maiorana spoke with Mr. Murray in Nabcor's New York office in the summer of 1967 or 1968 and Mr. Murray told Frank Maiorana

Jerry BIGGERS
CHEVROLET
227 S. GROVE AVE. ELGIN Phone 742-9000
ILLINOIS
60120

20100

A 235'

December 5, 1972

National Auto Brokers Corporation
Executive Plaza
York Rd & Spring Ave
Elkins Park, Pennsylvania

Attention: Michael F. O'Brien

Dear Mr. O'Brien:

To follow up our phone conversation of this date, the following outlines what we consider to be a fair equitable purchase program for all Chevrolets (except Corvettes) between NABCOR and Jerry Biggers Chevrolet:

1. We will order and arrange for the drop shipment of your customer's Chevrolets to a reputable franchised Chevrolet agency as close to your destination requirement as is reasonable price-wise and possible.

2. We will sell new 1973 Chevrolets except Corvettes for my factory cost plus $25.00 and whatever make ready charges the delivering dealer passes on to me.

3. It is a serious breach of franchise for a Chevrolet dealer to issue a Manufacturer's Certificate of Origin without proper ownership designation. It is also impossible for a dealership to " jine " cars out of their zone to retail customers. We will issue all Manufacturer's Certificates of Origin to NABCOR, Inc., since a corporation may buy automobiles for drivers on a nationwide basis without infringing on sales territories in other zones. I'm sure you can handle this arrangement " technically ".

4. Regarding the matter of payment, until such time as Biggers and NABCOR get to know each other we will require a 1/3 deposit at the time of ordering and the balance due in full before the unit is released to your driver by the delivering dealer. The president of this organization requires payment by check.

Mr. Michael O'Brien
National Auto Brokers Corporation

Dec 5, 1972
Page II

We are very eager to build our fleet volume and have the experience and knowledge to handle a new growing organization like yours, expertly and profitably for all parties concerned. Please give the foregoing your immediate and careful consideration and advise me by return communication, whether these first steps meet with your corporation approval.

Yours very truly,

Dolores T. Vaszily
Fleet Manager

Leo L. Leichter
President

PURCHASE ORDER

215 - No 5-1300

NARCOR, INC.

YONKERS, N. Y. 10710

Order No. 3010CBI.

Date 2/14/73

Ordered from COLONIAL CADILLAC

Address 1155 OLDEN AVE.

City TRENTON N.J. 08638

Att. MILDRED HARTSUGH

Make of Car 1973 CAD.

Series CALAIS (2 DR. - CPE.)

Model No.

Ext. Color No. (#72 RED EXT.)

Trim. No.

Top (WHITE VINYL TOP.)

OTHER EQUIPMENT -
AIR CONDITIONED.
WHITE VINYL TOP.
NO RADIO !!
JUST WIND SHIELD ANTENNA

Equipment.

- ☐ 6 Cyl H.P. Eng.
- ☐ 8 Cyl H.P. Eng.
- ☐ Auto. Trans.
- ☐ 4 Speed Trans.
- ☐ Power Steering
- ☐ Power Brakes
- ☐ Power Windows
- ☐ A.M. Radio
- ☐ Rear Speaker
- ☐ Air Cond.
- ☐ Tinted Glass, All
- ☐ Tinted Windshield
- ☐ White Walls
- ☐ Wheel Covers

Remarks

PLEASE COMPLETE AND RETURN ATTACHED ACKNOWLEDGEMENT CARD. THANK YOU.
NARCOR, INC.

Form [illegible]

Authorized Signature

Supplier's Copy

BEST COPY AVAILABLE

PURCHASE ORDER

[illegible]

NABCOR, INC.

YONKERS, N. Y. [illegible]

Date 2/14/73

Order Nº 321066-3

Ordered from COLONIAL CADILLAC

Address 1155 OLDEN AVE

City TRENTON N. J. 08638

Att. MILDRED HARTSOGH

Make of Car 1973 CAD.

Series CALAIS - CPE.

Model No.

Ext. Color ([illegible] TEAL EXT)

Trim No. (WHITE INT.)

Top (WHITE VINYL ROOF)

Equipment:

~~☐ 6 Cyl. H.P. Eng~~
~~☐ 8 Cyl. H.P. Eng~~
~~☐ Auto. Trans~~
~~☐ 4 Speed Trans~~
~~☐ Power Steering~~
~~☐ Power Brakes~~
~~☐ Power Windows~~

~~☐ AM Radio~~
~~☐ Rear Speaker~~
~~☐ Air Cond.~~
~~☐ Tinted Glass, All~~
~~☐ Tinted Windshield~~
~~☐ White Walls~~
~~☐ Wheel Covers~~

OTHER EQUIPMENT-
AIR CONDITIONING
BUMPER STRIP
TINTED GLASS
AM/FM. RADIO
VINYL ROOF
LR 78-15 W/W TIRES
EXT. VINYL SEATS.

Remarks: Mildred — please confirm

PLEASE COMPLETE AND RETURN ATTACHED ACKNOWLEDGMENT CARD. THANK YOU.
NABCOR, INC.

Form SAPO 2702

Authorized Signature

Supplier's File Copy

A 239

COLONIAL CADILLAC INC.
P. O. Box 1326
Trenton, New Jersey 08607

U.S. POSTAGE
.08
N.J.

NABCOR, INC.
Fox Pavilion Suite 619
Jenkintown, Pa. 19046

Att: Mr. O'Brien

right now --

THE COURT: Excuse me. When were you suggesting the trial on the merits be held?

MR. PERSON: Whenever your Honor can find time for it. I want it as quickly as possible, but we have the irreparability problem now. We have a serious problem, which is necessitating my client going out of the business, which we are trying to preserve by this action for a two-year-and-three-month period.

THE COURT: When did the irreparability problem come up for the first time?

MR. PERSON: It has come up, I would say, in the past several months. We went public and raised money about eighteen or nineteen months ago, and the moneys have been dissipated, so that we are now sitting there with very little money.

My client has financed his own company to the extent of more than $100,000 personally, by guarantees.

THE COURT: Well, when were the moneys dissipated?

MR. PERSON: Spent.

MR. MAIORANA: Spent, your Honor.

THE COURT: Are you head of NABCOR?

MR. MAIORANA: Yes. I am president of NABCOR.

MR. KAPLAN: Your Honor, if I may --

MR. MAIORANA: Will you excuse me, Mr. Kaplan?

MR. KAPLAN: Your Honor, I object to any presentation by Mr. Maiorana. First of all --

THE COURT: Listen: I've got a problem here of scheduling.

MR. KAPLAN: I understand. I simply would like to protect my record.

THE COURT: All right. You have protected your record. I understand your objection.

What is the problem?

MR. MAIORANA: Well, the question, as I understand it, was how these moneys were dissipated. They were not dissipated; they were spent for normal expenses.

THE COURT: Frankly, I am concerned. We have a motion made right now, and we have a program for the orderly and expeditious conduct of this case, and now I am told that there has to be a trial, and the word is used "immediately".

Are you asking for a trial immediately?

MR. PERSON: We are just seeking an agreement to cease interfering with our source of supply. That's all we are asking. Just on the limited issue of whether they are interfering with us and whether we have a right to a protective order.

THE COURT: Your motion said that you wanted the injunction; nothing further. And we would be very happy to see them consent to it. We don't want the trial, but we need it.

THE COURT: Well, I think you better decide when you want this motion heard.

MR. PERSON: Immediately, your Honor. We are he right now.

THE COURT: Well, we can't have it right now.

MR. MAIORANA: I put a hundred thousand dollars into this company, put up my home as security, sold the property, another property that I had, and that money is almost gone. We are in the --

THE COURT: When did this money get almost gone?

MR. MAIORANA: We had about enough to spend for about another month. That's it. Three weeks, at the outs

THE COURT: When you are talking about money, h much money have you got now?

MR. MAIORANA: About fifteen thousand. Ten or fifteen thousand.

THE COURT: When did you get down, roughly, to t level?

MR. MAIORANA: When I put the money in, it was necessary to put the money in to pay a lot of existing deb your Honor, so about forty --

THE COURT: You got so low that you had to put a hundred thousand dollars in?

MR. MAIORANA: That's right.

THE COURT: When was that?

MR. MAIORANA: On November 20th, your Honor.

THE COURT: Of last year?

MR. MAIORANA: Right. I made an application November 20th, and the bank didn't give me money until December 19th. It's that close. Now, here we are in the spring. I'm in the automobile business. I need cars, and even just last week I was shut off from a Cadillac dealer because of a factory meeting, and they told the dealer not to give us automobiles.

THE COURT: I am worried about the timing.

MR. MAIORANA: The timing is that I have to go out of business if I can't get relief.

THE COURT: The problem is, your company was so badly out of cash last November that you had to put in a hundred thousand dollars of your own money; right?

MR. MAIORANA: Yes.

THE COURT: And the problem I have is that all of a sudden, after this action has sat around for two years, we have established a schedule to do something in the way of getting to the facts. We've got a deposition schedule set, and you now choose, at this particular moment, to launch a preliminary injunction motion, which would consume a great deal of energy and could, I think, could and would disrupt the deposition schedule.

MR. MAIORANA: But, your Honor, it's only last week --

THE COURT: And I say to you that if you were so badly off in November, that was the time to make this motion, and this is not the moment in time to have waited to do it, because I think it is terribly disruptive of what we have set out in this case.

MR. MAIORANA: Can I answer that, your Honor?

THE COURT: All right.

MR. MAIORANA: It was only last week that General Motors created this situation. You see, I was holding out for the spring. I have to start accelerating now. Dealers hold meetings and start selling automobiles. It's only last week that General Motors created this situation.

THE COURT: What did General Motors do last week?

MR. MAIORANA: Last week --

THE COURT: In other words, they did something last week that they weren't doing before?

MR. MAIORANA: That's right.

THE COURT: Last November and before?

MR. MAIORANA: Yes.

THE COURT: Is that something that just started?

MR. MAIORANA: I felt I could -- the dealer, Genera Motors, shut off our supply at another dealership. So here we are in the spring, your Honor, and I will not be able to accelerate car sales. I will not be able to stay in business. And here we are being forced to go through all --

THE COURT: Is this the first time General Motors has done this?

MR. MAIORANA: It has done it continuously.

THE COURT: If they were doing it continuously, it isn't something new. That is my whole point. This situation is --

MR. PERSON: It is irreparable in the circumstance that he is running out of business money. We are throwing i onto your shoulders, because there is nothing more we can do. We are self-help people --

THE COURT: Let me ask you, Mr. Person: How do you suggest we handle the voluminous motion for a preliminary injunction?

MR. PERSON: By a consent on the part of GM to refrain from tampering with our source of supply. We are entitled to that under the anti-trust law. I don't see how they can continue to do it.

THE COURT: That is an admission that they are doing it. I take it you don't consent to it.

MR. KAPLAN: We flatly deny it, and we consent to nothing.

THE COURT: That is just really an absolutely vain question. I mean, it assumes the whole violation.

MR. PERSON: We have all these things set forth here.

THE COURT: I am asking you, Mr. Person, how you suggest we handle a massive motion for a preliminary injunction and carry on the discovery program. I would just like a suggestion from you.

MR. PERSON: I would say that we are very happy to do it in the evening, or we will do it with two attorneys, that is, one attorney representing my clients in the depositions and another representing the matter before you at the hearing. We are not afraid of having two attorneys, and I don't know why GE is afraid.

THE COURT: As long as you have not given any specific time in this motion, and as long as the situation was serious enough for this gentleman to have to advance his own money last November, so that the seriousness of the situation was hardly a new thing now, and as long as we have set, after great consideration, a deposition schedule to consume the month of March, I am going to designate the time for the hearing of this motion to ten days after the completion of the depositions.

MR. PERSON: It may not be necessary then.

THE COURT: You left it up to me to designate it. You did not move earlier, and therefore I am setting it for ten days -- In other words, I will set it for April 10th, and if it is necessary to postpone the making of the class action motion --

MR. PERSON: Can we have findings of fact then, your Honor, according to the rule? I think we need findings of fact.

THE COURT: I am sorry, Mr. Person. The findings of fact are necessary after I have heard the motion for a preliminary injunction. You did not notice it for a specific time. You noticed it for a time and place to be designated by me, and I am designating the time and place right now. You can put on any evidence, either by exhibits or oral testimony, at that time on any issue you consider relevant, and that will be April 10th.

Let me just say again that the notice reads:

"Please take notice, that upon the" -- and so forth -- "National Auto Brokers Corporation will move this Court before the Hon. Thomas P. Griesa, at a time and place to be designated by him", and so forth.

I am designating the time to be April 10, 1973.

MR. PERSON: I would like to move to amend that to a present date. I only did this, your Honor, because your practice has appeared to be that you would set the date. I was not aware that I had the right to set a date for you. Otherwise, I would have set an immediate hearing. But I wanted to give you the courtesy of allowing you to set the date which would conform to your schedule -- and I am only --

THE COURT: Okay, Mr. Person. If you want to serve a new notice, if you want to designate, according to the rules, give ten days' notice, you can do that, and then if the other party wants to move, or the other parties want to move for an adjournment, they can do that.

MR. PERSON: Is it going to wind up with the same result? I am not going to change the papers. I would merely make a request that it be done according to the rules, and I thought that your Honor's own practice was that you would set the date on that, for you to put the right date in.

The only reason I chose that was to defer to you. I would much rather have followed the rules, but I took the courtesy of trying to give you that time so that you could fit it in.

THE COURT: We have gone through this. We have oth problems in this case, and we have hashed that out pretty thoroughly.

Now, do I understand that you are amending your notice and you are moving according to the rules, and you are noticing the motion for ten days from now? Is that right

MR. PERSON: Yes, your Honor.

THE COURT: So we will just say that the notice is amended to March 18, 1973. That is a Sunday. Make it March 19th.

If there is a motion to adjourn, a motion for an adjournment, we will have to see what we can do about that and hear the reasons for and against the adjournment.

MR. KAPLAN: Your Honor, I so move now for an adjournment to April 10th. That March 19th date is of no material change in the posture of the lawsuit.

On March 19th, if we are going forward without a hearing and without papers on this application, we are going to be taking depositions, and if we have an open-ended preliminary injunction motion hanging over our heads, in all probability we will not be able to go forward with the deposition.

My client simply cannot afford to have the prospect of an injunction coming on to be heard on the 19th of March without spending the intervening period preparing for that hearing, if there is to be a hearing. There will be no change in posture on our part between now and then.

I would also like to call to the Court's attentio a couple of rather notable facts about the plaintiffs' pape The first notable fact is that the plaintiff claims that there were thirty-nine refusals to deal. He specifies them lists them, gives some particulars as to thirty-one of thos refusals, which took place before this lawsuit began.

THE COURT: Where is the specification?

MR. KAPLAN: It begins in Paragraph 41.

MR. MAIORANA: Let's have a hearing if we are goi to get into the facts.

THE COURT: We have been discussing the adjournme Mr. Person, we have a problem of timing, and it is --

MR. PERSON: Irreparability is also one. We are going to lose the client.

THE COURT: But if a fellow waits -- In other words, you claim "immediate and irreparable harm", but the question I am concerned with now -- and it is really the question that I addressed to Mr. Maiorana, and I address myself equally to it, and I want to hear Mr. Kaplan on it - is this: If you claim that injury is going to occur ten day from now, but you waited for four months to make this sudde motion, then it seems to me that you really got yourself in this box, and I am not disposed to interrupt the very carefully worked out schedule which we have in this case, which is designed to ultimately get this whole matter terminated expeditiously without delay.

Now, I am going to hear Mr. Kaplan. I heard Mr. Maiorana, and I am going to hear Mr. Kaplan.

Okay. What do you have, Mr. Kaplan?

MR. KAPLAN: First, I would like to address mysel to the problem of immediacy apart from the matters your Hon inquired into.

As I noted, Paragraph 41 of this affidavit, whic begins at page 20 and goes on for many pages and lists thir nine alleged refusals to deal -- thirty-one of those refus allegedly occurred before the commencemtn of this lawsuit.

THE COURT: Where are the thirty-nine listed?

MR. KAPLAN: They begin at the top of page 20, wi the little numbered paragraph, Number 1, and they go on fo pages.

THE COURT: All right.

MR. KAPLAN: Now, that first one contains --

THE COURT: Are there any of these that relate to the recent --

MR. PERSON: Number 1, the first one, your Honor. Colonial.

THE COURT: Colonial Cadillac. It says, "Date of termination agreement 1/67, 4/71 and 2/73".

Are you referring to 2/73?

MR. PERSON: Yes, your Honor.

THE COURT: And 2/73 refers to what?

MR. PERSON: February 26th, I think.

THE COURT: And how many cars were you denied on February 26th?

MR. MAIORANA: Three, your Honor. Three Cadillacs. They delivered one and rejected the other three. But the factory wouldn't give them any additional automobiles, and that was it.

In this particular case, this particular dealer -- I've known him since '62. He used to give me automobiles. I wanted to give me cars. I've been friendly. He wanted to do business. He applied for a fleet certificate for me. He was turned down by the manufacturer.

There have been three or four times, and at this point he indicated that, "Just let's forget about it at this point. Don't call me; I'll call you" type of situation.

And this has brought about the situation, your Honor. We didn't waste time. I felt that I could still continue to operate, that if there wouldn't be any concerted effort to stop me here now, spring is coming in, and we could start accelerating, and I would be able to survive, you see, now that thing is coming, and this was just brought to a head. Our Cadillac source is gone. Our employee, Mr. Mike O'Brien, is demoralized. I have to go out to look for new sources, not knowing whether they are going to be stopped almost immediately again, the minute they call the manufactur and he says, "You need a fleet certificate" or "Don't sell him cars".

So this is the situation I am in, your Honor. I am just dissipating my cash. And General Motors could have it an extra two weeks later. In other words, the motion for the class action could be made later. It's being --

THE COURT: That is really no problem.

MR. MAIORANA: They can hold their depositions two weeks later. I may not be in business, your Honor.

MR. PERSON: We are not asking for that.

THE COURT: All right. We've got a problem. Apparently the allegation is that a Cadillac source was denied on February 26, 1973. The rest of the allegations relate to denials very long ago in time.

MR. PERSON: That's correct.

THE COURT: Is there a way that we can take care of the issue of this Colonial Cadillac in Trenton, New Jersey?

MR. KAPLAN: I know you are turning to me, and I cannot speak with authority about it, because I don't know the facts pertaining to this transaction.

THE COURT: Either by some agreement or by handlin the motion on that very limited basis.

Now, could we handle the motion on simply the issu of Colonial Cadillac?

MR. PERSON: Certainly.

THE COURT: And I don't know, but maybe that is a possibility. If I am told that a fellow is about to go out of business, I think I've got a problem. And I was also told that the issue relates to one dealer. I mean, I can hold a hearing at night.

MR. KAPLAN: Your Honor, I unfortunately can't tak the same view of this, and I don't foreclose the possibiliti that arise until I consult with my clients, but I can make a few points.

Number one, we have no evidence whatsoever on this affidavit -- none -- that General Motors had anything to do with this transaction except for Mr. Maiorana's statements, and he has a dealer here who he claims is an old friend since 1952, from whom he doesn't have an affidavit, and it seems he doesn't have an affidavit from any other dealer or anyone else besides himself.

There is in this Circuit and in other Circuits --

and I can cite cases -- simply no basis for the issuing of a preliminary injunction.

THE COURT: Let me just suggest this:

We have all had a rough day, and I've still got a thing to do out there, but I wonder if we could do this:

We've got an agreement to limit the issue on this motion, the issue of Colonial Cadillac. Now, I wonder if it may be simple, in other words, if there is a failure of proof on Colonial Cadillac, that maybe at the end of that or maybe subpoena the guy at Colonial Cadillac and have him come in early in the morning or late at night.

But I'm afraid that we are going to have to handle this in some way. I think we can't leave it hanging until the 10th of April, in view of the limitation of the issue.

Now, if there is a failure of proof on its face, maybe that's the end of it. I haven't read these papers. I haven't read them.

MR. KAPLAN: I understand, your Honor.

THE COURT: Or if there is a simple way of handling it -- and I think basically that is what Mr. Person is suggesting -- he has been willing to narrow the issue on this motion so that it can be handled quickly and fit in with the depositions.

Now, I think that's pretty reasonable; isn't that

that right?

MR. PERSON: Yes.

THE COURT: Okay. Let's figure out a way to do it. Let's leave it noticed for March 19th, and let's try to handle it on that day and handle it in the simplest way we can. I don't see anything else to do.

MR. KAPLAN: Do I understand you correctly to this extent, that this motion, as to the extent that it seeks relief in connection with anything other than the single trans action concerning Colonial Cadillac alleged on page 21 of Mr. Maiorana's affidavit, is adjourned until April 10th and that the matter --

THE COURT: No, no. You are not writing a corporat indenture here. As I understand it, this whole motion is reduced to Colonial Cadillac, and we are going to hear that on March 19th.

In other words, it will be the issue of whether there was a wrongful denial by Colonial Cadillac which was caused by the defendants here, and that is the beginning and the end of this motion, and there won't be anything on April 10th at all.

MR. KAPLAN: What is the relief sought if the motion is limited in that way? Do you mean to say that they are saying there was an unlawful refusal to deal --

THE COURT: You don't know whether you've got a good thing.

MR. KAPLAN: Well, your Honor --

THE COURT: I just ask you to give it some thought. Please do that. I am faced with a fellow who tells me he is going out of business within the next month, and his lawyer is willing to take this large motion and reduce it to the narrowest terms.

Now, I can't tell the guy to go out the door until April 10th on that basis, and I don't think you should, either. So I am going to just ask you to ponder this, and, you know, adjust yourself and get back here with some kind of response on March 19th.

Let's have the guy from Colonial Cadillac. He can testify for a few minutes, and you can see what General Motors did as to Colonial Cadillac, and, you know, maybe it will be of somehelp. I am going to hear it that way.

MR. KAPLAN: I accept your Honor's statement.

THE COURT: And as far as relief is concerned, I mean, if he proves that he is entitled to a preliminary injunction, we will figure out some relief, preliminary relief. If he doesn't, there is no problem of relief.

MR. KAPLAN: Well, I simply want to make one point, your Honor, and it is this: If this case is being tried on

425

3/12/73

thereof, and all documents pertaining or relating both to General Motors Corporation and Colonial Cadillac."

MR. PERSON: Yes.

MR. KAPLAN: Mr. Person agreed to respond to Number 3. He has refused to respond to Numbers 4 and 5, which seek financial papers relating to Nabcor and Frank Maiorana.

It seems to me that in light of the eloquent plea Mr. Maiorana made here the other night about his financial condition, this is relevant.

THE COURT: All financial records --

MR. PERSON: That is burdensome, your Honor. The financial statements --

THE COURT: I will limit it to financial statements.

MR. KAPLAN: Your Honor, we have already got a fair amount of financial statements, and we are dealing with the financial position of these persons.

MR. PERSON: The most recent.

MR. KAPLAN: Excuse me, Mr. Person. In February and March 1973. It is likely that we will not get financial state,emts tjat are amu ,pre recemt tjam tje emd pf tje uear. at best, and it seems to me that I will jolly well be entitled to inquire into their immediate financial position in order to defend against the claim --

MR. PERSON: The most recent bank statement, your Honor, would that suffice?

THE COURT: I think as to 4 and 5, I would say the documents relating to the claim of current financial crisis.

MR. PERSON: On the part of Nabcor and Mr. Maioran and Mr. Maiorana's contribution, guarantee of contribution of $100,000 or more.

THE COURT: On the part of Maiorana and Nabcor, because Maiorana put in money in the past.

I think it is a legitimate question whether he is able to keep putting it in.

So I would say all the documents relating --

MR. PERSON: Your Honor, that isn't really so that one shareholder out of many would have to keep feeding his own money into it.

THE COURT: I know, but let's have the facts here.

MR. PERSON: The personal financial records of this individual?

MR. KAPLAN: It's relevant in any event, since Mr. Maiorana is an individual plaintiff in this case, and since he claims that in his personal capacity he was injured --

THE COURT: That isn't the motion.

MR. KAPLAN: I understand, but it's going to be relevant. And since we are arguing it is relevant, we are entitled to it.

THE COURT: Certainly as to Nabcor.

MR. PERSON: And the documentation underlying his claim that he has supported Nabcor to show that he has paid money into or guaranteed loans to Nabcor.

THE COURT: All right. Let's leave it at that. Let's do this: I want you to produce with respect to paragraph 4 all the financial statements and all the documents underlying the claim of financial emergency currently being experienced by Nabcor.

As to 5, produce all -- or as to 4 and 5, produce all documents showing Mr. Maiorana's contribution to Nabcor. I guess that is it.

6, any objection to 6?

MR. PERSON: No.

THE COURT: Any further objections?

MR. PERSON; The seventh, the stock tranfers.

THE COURT: Why do you need that on this motion

MR. KAPLAN: Your Honor, we don't necessarily ne it on this motion. We do very much need it in connection wi our discovery and in accordance with the schedule that you established because one of the issues here is going to be what the relationship of a gentleman named Burgenson of whom you have read something earlier was to this company at relevant periods, and if your Honor needs more facts on that

THE COURT: Documents relating to transfers of the stock, would that be transfer books, or what?

MR. KAPLAN: Yes, sir. I want the stock transfe books.

THE COURT: All right. Let's have them produced

8, any objection? That ought to be simple.

MR. PERSON: Could you read it, please?

MR. KAPLAN: Yes. All minutes of the board of directors of National Auto Brokers from December 1, 1971 to date.

Schedule A

Name of Person to be Examined	Date of Examination
NATIONAL AUTO BROKERS CORP. by its President, FRANK MAIORANA	March 28, 29 and 30, 1973
NATIONAL AUTO BROKERS CORP. by its Vice President, ANTHONY MAIORANA	March 26 and 27, 1973
General Auto Sales & Leasing, Inc., by its President, DALE STRIMPLE	April 2, 1973
COURTESY AUTO BROKERS by PETER CUCCI, a partner thereof	April 2, 1973
NABCOR OF EAST NEW YORK, INC. by its President ERNEST TURCO	April 3, 1973
ROBERT B. HEIM	April 3, 1973
LOUIS H. JAMELE	April 4, 1973
NATIONAL AUTO BROKERS CORP., by Larry Spector of 1 East Penn Center, Philadelphia, Pa.	April 4, 5 and 6, 1973
ALFRED J. YOUNG, SR.	April 5, 1973

the dealer an additional allotment of new automobiles which he can sell at retail, giving him an advantage over other dealers who do not elect to go into the fleet business. See ¶ below. This is a discrimination against dealers who do not elect to go into the fleet business in order to increase their allotment of new automobiles which can be sold at retail, and is a violation of § 2 of the Clayton Act, as amended by the Robinson-Patman Act. Nabcor is hurt by GM's policy, because GM dealers not in the fleet business (such as Colonial, see page 14 of the transcript, part of Exhibit B hereto) do not have the same number of automobiles which can be sold at retail.

15. Cars sold by GM dealers on a fleet basis cannot be delivered by the dealer out of the dealer's territory without the prior written consent of GM. As stated by GM (see Exhibit J hereto):

> "We are pleased to inform you of recent approval of a change in our position concerning drop shipments to fleet users. As you know, under our previous prodedures, drop shipments other than to body companies were prohibited.
>
> "....we wish to advise that drop shipments bay be authorized, with pre-approval, based on the following considerations:
>
> "1. The selling dealer, customer and drop-ship location are located in the same marketing area.
>
> "2. Vehicles will be received at the drop-ship location by personnel of the selling dealer.
>
> "3. Complete new car conditioning, in accordance with the dealer's Selling Agreement obligation, will be pefformed by and under the supervision of a qualified employe of the selling dealer.
>
> "Prior approval from the Fleet and Government Sales Section will be required before drop shipments may be authorized. In this connection, we would appreciate your furnishing us information concerning any drop shipment arrangement which you may currently have in effect.
>
> "We would like to emphasize that it will not be our policy to encourage drop shipment of vehicles, but rather to approve them on a limited basis only where the individual circumstances would indicate that it would be in GM's best interest."

See Exhibit K hereto. This is a per se violation (as a territorial restriction) of §§ 1-2 of the Sherman Act, which prevents GM's dealers from selling on a fleet basis (whether by a fleet certificate certificate or not) to Nabcor for drop shipment out of the territory to Nabcor or Nabcor's customers and was apparently established by GM as its reaction to the formation of the Nabcor system of selling cars (bought in one area) to retail purchasers (located in other areas) on a fleet basis (plus a fixed markup of about $225)for pupular models).

16. Prior to a few months ago, GM was offering rebates to dealers and (with the dealer's approval) to holders of fleet certificates. See page 9 of Exhibit K hereto. None of these rebates was available to Nabcor because Nabcor could not get a fleet certificate. (GM eliminated this fleet subsidy program after Nabcor filed its complaint, in this matter.) Any GM dealer who sold cars on a "fleet" basis to persons who did not hold the fleet certificate was charged back with the discount. See page 18 of Exhibit K. This policy was actually enforced by GM. See details of chargeback of fleet discount to Buick dealer) who sold to Nabcor, at ¶40(27), page 36, of Frank Maiorana's affidavit in support of the motion for a preliminary injunction, a copy of which paragraph is annexed hereto as Exhibit L. To police this rebate system to fleet certificate holders only, see the GM requirements that GM dealers hold their records of fleet certificate entitlement for a 2-year period (page 17 of Exhibit K hereto), a requirement which the National Distribution Manager of Cadillac said did not exist (see page 171 of the transcript, contained in Exhibit B hereto).

432

3/23/73

in, and the net result is he was out a lot of money. We are preparing that and backing that up with the documentation. Part of that was refused by Mr. Kaplan the other night at the hearing. He said no, he wouldn't take it. That is his prerogative. I took it back with me.

THE COURT: It is very hard for me to make any judgement. All I know is this is a discovery. You have got a very big anti-trust suit, you are requesting a preliminary injunction because of the emergency condition of the company, as you allege, and I would say they are entitled to look at anything they want to literally.

It doesn't mean you have to cart it all across the country. They can go to you. But I mean that they are to have access to the financial records of this company.

MR. PERSON: Okay.

THE COURT: You agreed to it, you didn't offer any objection, and that agreement was made on March 15, 1973 and I really don't see any reason to relieve you from it. I would say that you are to ---

MR. PERSON: Mr. Rosdeitcher was the one who originally raised the question.

I believe that the agreement I was talking about was with Mr. Kaplan. I think there are two different --- in other words, that the statement of agreeing didn't going to require any additional document production other than what I had ordered and what you had agreed on voluntarily in addition.

Now we are not talking about documents for the preliminary injunction hearing of March 19th, we are talking about whatever document production is necessary for the merits of the case. In view of that, do you have any objections?

MR. PERSON: The first two particularly to the extent that they conflict with your determination on usin the accountant. This thing would merely be doing in another way what we have agreed to set aside by using the accountant.

THE COURT: Yes.

MR. PERSON: They are in conflict with that. They require the ---

THE COURT: Then, that conflict should be resolved in favor of what we said a few minutes ago.

I really think you fellows can use some sense on this. That should be obvious.

MR. PERSON: Those are the two problems that I had with this.

THE COURT: All right, fine.

MR. PERSON: I have another problem and that is when you had ordered at that General Motors produce documents relating to the quota and the limitation, General Motors produced no documents whatever, other than a list, a statement compiled by the law firm from some kind of documentation so that I have been unable to get the discovery that was ordered by you relating to both allotments and relating to the quota system.

These are very important parts of the case and it makes it very difficult not having the documentation.

THE COURT: Where is my record?

MR. KAPLAN: That was March 12th, Your Honor.

THE COURT: What page is that?

MR. KAPLAN: I believe it sta ts on page 22, if I am not mistaken.

I am sorry, it is much earlier. Page 18.

THE COURT: All this does is refer to items. Does anybody have the document with the items?

Where is your request?

MR. PERSON: I have the essence of the examination, Your Honor, in an affidavit in support of a request to allow plaintiffs to have discovery.

THE COURT: You come up here and you want me to rule on what you claim is a violation of a prior ruling of mine.

MR. PERSON: This is, in essence, the ruling.

THE COURT: In essence is different from the exact ---

MR. PERSON: I didn't take it down word for word.

THE COURT: I don't understand why you didn't bring in the document request you are trying to get me to enforce.

MR. PERSON: You have modified it during the conversation, Your Honor.

THE COURT: It is terribly difficult for me to deal with page 18 of the transcript of March 12th where we talk about item one. I don't know what item one is and you haven't brought it in.

Item two, item three, what did those items say?

MR. PERSON: It was a request to have all of the documents underlying G.M.'s allocation for fleet and allocation for retail cars to Colonial.

THE COURT: Was that item one?

MR. PERSON: That was item seven.

MR. KAPLAN: Your Honor, I believe it was eight and the discussion of eight is on page 25.

MR. PERSON: Item eight. I am sorry.

THE COURT: What did item eight say?

MR. PERSON: Item eight was a request to have all the documents underlying the allotment and the quota system with respect to Cadillacs and I think we limited it to Colonial.

MR. KAPLAN: I think the operative language, Your Honor, was modified completely from the language of the agreement.

It starts on page 26, beginning on line 20 and continuing over to the next page.

THE COURT: We are talking about item eight, right Mr. Person?

MR. PERSON: Yes, Your Honor.

THE COURT: What documents ---

MR. PERSON: No documents at all were produced by General Motors.

THE COURT: There may not be any.

MR. PERSON: It is just impossible ---

THE COURT: Mr. Person said ---- there were two or three pages of the discussion, it ends up with a statement by you suggesting this:

"What about documents relating to a policy on any limitation or quotas which Colonial has had over the past period?

"THE COURT: What about that? That is fairly narrow."

I was addressing Mr. Kaplan.

"In other words, if you have a kind of a polic document or instruction document.

"MR. PERSON: Anything that would reflect a quota or limitation on the number of vehicles Colonial is permitted to sell.

"THE COURT: That is limited to Colonial. All right."

MR. PERSON: May I explain how this works, You Honor?

THE COURT: Mr. Kaplan said, "I will produce what I find and what I can produce in a hurry.

"THE COURT: Anything you can produce by Frida

MR. PERSON: Your Honor, may I explain what this refers to in the automobile business?

THE COURT: I would just like to ask Mr. Kapla have you looked for documents of General Motors reflectin a policy on any limitation or quotas which Colonial has had over whatever period we were talking about?

MR. KAPLAN: Yes sir. We have inquired of ou client and we have been informed in substance that the only piece of paper or only limitation on the number of vehicles Colonial is permitted to sell is the number of vehicles that we sold to them in each of the years and we produced a schedule indicating that number.

THE COURT: All right. What kind of documents do you claim there should have been which were not produced?

MR. PERSON: There is a limitation on the number of cars which the zone has the right to re-allocate and that system of re-allocation to the dealer has to be documented somewhere with figures representing who gets the cars and on what basis. It is just impossible that it is all done verbally as we had testimony to the other day. People can't remember verbal allocations to even know whether they should accept an order against verbal allocation, and how is this list compiled of what cars had actually been sold. It had to come from some documentation. There has to be documents underlying the --

THE COURT: Mr. Person, what we were talking about here was a policy kind of document. I knew what you were driving at. You were trying to get memos exchanged among General Motors personnel saying ---

MR. PERSON: How the allocation is to take place.

THE COURT: Quotas, limitations.

MR. PERSON: Quotas is another side of the coin, Your Honor.

THE COURT: That is all you asked for, quotas and limitations. That's all you asked for.

MR. PERSON: Right.

THE COURT: Okay.

MR. PERSON: A limitation is an allotment. Th is an interchangeable term. They produced an allotment in compliance with that request for all documents relatin to limitations. They understood the term limitation to mean allotment.

MR. KAPLAN: Mr. Person, the letter I addresse to you indicated that there were no limitations, but we understood you as meaning something like that and, therefore, told you how many cars were produced.

I would appreciate your simply not putting words into my mouth.

THE COURT: All I am going to say is, look, I can't judge. If you want to in the course of examining at some subsequent point when you are permitted to do so, if you want to examine General Motors and if you ascertai they have documents that have not been produced, you will get them.

MR. PERSON: I have documents in here which I obtained from Detroit Grand Jury investigation and indict ment.

THE COURT: Why are you calling my attention to? This is anew affidavit in support of your preliminary injunction notice, March 23rd.

What are the documents you are talking about?

MR. PERSON: The documents which I have are various references to limitations on the one hand, territorial limitations on the part of deale , restricting them from selling cars.

THE COURT: What exhibits? Just direct my attention to it.

MR. KOLMAN: Mr. Person, have we been served with a copy of the affidavit?

MR. PERSON: No. This has just been prepared this morning.

THE COURT: What exhibits to this affidavit?

Are you looking at your affidavit?

MR. PERSON: Yes, I am looking at my affidavit trying to pick up the reference. I had first of all, started out by showing what documents they had produced.

MR. KAPLAN: Your Honor, while Mr. Person is looking for the reference perhaps I might comment on this.

We were under the impression that we were trying a preliminary injunction motion concerning a refusal to deal by Colonial Cadillac and I think Your Honor really stated the issue, as we understood it, the other night and looking at the broad picture for a moment we also understood that we were in a discovery schedule leading up to a class action motion and some summary judgement motions by defendants and that when we finished that then the plaintiffs could get discovery of what was left of the case.

Now, Mr. Person has broadened that preliminary injunction hearing first by bringing in the issue of whether Colonial refused to deal because of something in the Cadillac fleet program. The dealer testified that he had refused to deal because the first transaction was a fiasco. There has been no contradictory evidence.

During the course of the hearing through Your Honor's generosity to the plaintiffs Mr. Person then got into the question of whether the primary area of responsibilities system used in the automobile business violates the anti-trust laws. We now seem to be going based on the exhibits in this document, into the fleet price fixing case which is now in Detroit, into the Chevrolet 1970 fleet plan.

In other words, it seems apparent to me from these papers and from the performance on Monday night that the plaintiffs are, in fact, seeking to try this entire case on this hearing, and, moreover that we quite frankly don't have notice of what the issues that we are being asked to meet are until Mr. Person states them.

THE COURT: Look Mr. Kaplan, let us just relax. The issues are no different now than they were then. If Mr. Person puts in a lot of other papers dealing with other issues, I am not going to consider them.

Let us get back to your ---

MR. PERSON: I have various documents here which go into the fleet ---

THE COURT: All I asked, Mr. Person, is to have my attention directed to the kind of documents you say relate to the policy for Colonial Cadillac that you say have been withheld.

MR. PERSON: Exhibit I.

THE COURT: What is exhibit I?

MR. PERSON: This is a General Motors dealer's aid for developing fleet sales and profits for General Motors dealers.

THE COURT: What does it say about Colonial Cadillac?

MR. PERSON: It doesn't have Colonial. It is something ----

THE COURT: We limited that to Colonial.

MR. PERSON: It is something which Colonial would have received. This is something that Colonial was to receive. It is directed to General Motors dealers. It doesn't have Colonial's name, except it is all dealers.

THE COURT: What is there to show it is directe to the dealers?

MR. KAPLAN: Your Honor, there is one other ver

THE COURT: In the first place, Mr. Person, Mr. Kaplan is under a duty to respond to your discovery reques and that discovery request had limitations that were spelled out on the minutes. To come in here and speculate about what they might have it is very, very hard for me to deal with.

MR. PERSON: It is difficult. Unless I can hav the opportunity to ask somebody in G.M. what they have, it is very difficult to know whether or not they have complied with the order. The whole motion is dependent upon their good faith.

Now, they don't have a good faith attitude toward my client and what I certainly would like to know i whether I have been given all the documents to which I am entitled.

THE COURT: You are entitled to have that.

MR. PERSON: When can I have the discovery against them?

THE COURT: I think maybe if you doubt that you can have an affidavit from Mr. Kaplan that he has complied, something like that, but not to sit here and --- you point out a document to me that has no bearing on the discovery request, it seems to me. The discovery request was to be limited to Colonial Cadillac, period, that Item eight, and not get into broad general policies and you agreed to that limitation. Now we are going to hold to that. The reason I am interested in holding to that is that, Mr. Person, when we did get into the facts of the Colonial Cadillac transaction, we found out that as to that transaction the officer of Colonial, who I believed as a matter of credibility and I would find that I believed him, he refused to deal with your company because of your company's failure for a substantial period of time to pick up this one car they ordered.

He didn't testify and he wasn't even asked. He didn't testify that there was anything in the way of a volume or fleet level or orders. Nabcor, to him, was a party who came in and bought a car and then maybe they would buy another car. It was a sporadic, isolated kind of purchase. Nabcor to him wasn't any different than you or I would be.

MR. PERSON: He had accepted over 30 orders or 30 orders from a few years previously, but that was not part of what we ---

THE COURT: Your company walks in, apparently because one customer of yours, wants a yellow Cadillac, you go into Colonial and you say, "Get us a yellow Cadillac."

This was not a systematic volume purchasing situation at least at the time we are talking about. If you had a customer who wanted a Cadillac, you went to Colonial and asked for a Cadillac, and it happened that you didn't pick the car up and there were a couple more orders requested, not systematic or volume orders but a couple more orders, and he wouldn't do business with your and he said it was because ---- that is what we gathered that night of March 19th to hear about.

MR. PERSON: All right. Fleet orders are isolated orders. You went to one order for a fleet car and that was a fleet transaction.

THE COURT: He said fleet buyers give him numbers at the beginning of the model year. There is no testimony that you tried to do that with Colonial.

MR. PERSON: He came in at the half year mark and ordered more. That isn't in the testimony but in this documentation.

One crucial thing I left out and I would like to add that testimon at the next hearing is that the reason why we did not pick it up on the 28th was that the person who had ordered the car demanded delivery by the 25th and we demanded delivery also.

THE COURT: Your man testified to that.

MR. PERSON: And he refused subsequently to pick it up. We had to go over with his attorney and we had ---

THE COURT: That isn't a matter of anti-trust violation, that is a matter of a problem between customer relations, a difference of disparity of delivery dates.

MR. PERSON: The one is a problem and Mrs. Hartsough's testimony, I think, shows the fact that they do feel under a restraint by hiding the title.

THE COURT: No, I beg your pardon.

MR. PERSON: That is a very unusual transaction and it is illegal as a matter of fact.

THE COURT: Look here, there was no testimony introduced in four hours the other evening to indicate that Colonial Cadillac refused to deal with your client because of any restraint imposed by General Motors whatsoever.

I am not in any way pre-judging your overall case because there may be, as far as I know, a system somewhere that ---

MR. PERSON: I spelled it out in my affidavit.

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THE COURT: Yes. Excuse me, if you don't mind.

There may be a system somewhere that affects some dealers that is an anti-trust violation and if there is we will get to the bottom of that.

MR. PERSON: I pointed it out here.

THE COURT: But we are talking about a motion for a preliminary injunction which was occasioned as you alleged originally, by the Colonial Cadillac situation. Now the Colonial Cadillac situation has not been shown by you in any way to involve an anti-trust violation.

I will permit another hearing on this, but I am telling you, you better come up with some evidence directed to Colonial Cadillac, because I am not going to try the entire case at this time, I simply will not do it.

MR. PERSON: May I ask if these are the ground rules, then I am not for the purposes solely of this hearing and no other purpose permitted to go into the economic restraints which I believe have caused Colonial and various other dealers to refuse to deal with Naboor subsequent to the time these dealers have signified in writing their agreement to deal with us? That is my primary issue.

THE COURT: I will permit you not to go into the type of restraints, I will permit you to go into the question of whether Colonial Cadillac in this finite period of time in the recent months we are talking about was, in fact, acting under a restraint.

I know that there can be different kinds of evidence, direct evidence, circumstantial evidence and so forth, but you have got to show me an order to get a preliminary injunction something which in four hours the other evening was thoroughly contradicted, it seems to me.

MR. PERSON: May I suggest that this possibility might meet with your approval, that if we can show that a dealer could lose his franchise under this system that G.M. has set up if they sell to Nabcor, is that a legitimate probability now?

THE COURT: No, it is not. You are talking about general procedures. I want to know the facts --

MR. PERSON: They hid the title because of that, Your Honor. They hid the title from G.M. as a result.

THE COURT: What does the hiding of title have to do with our problem?

MR. PERSON: It has everything in the world to do with it. G.M. requires that a dealer sell its cars within a certain territory. That is an illegal restraint under any kind of anti-trust law. They do it in such a way by limiting the supply of cars ---

THE COURT: That had nothing to do with preventing your fellow from getting a car, nothing.

MR. PERSON: It does though, Your Honor, becaus Colonial itself hid the title from G.M. in order not to be penalized by G.M. for having sold that car to Nabcor, which is outside of their territory.

THE COURT: There was no record of that whatsoever.

MR. PERSON: There was, Your Honor. I asked that question.

THE COURT: No testimony on that.

MR. PERSON: I did ask that question and she agreed with me. Mrs. Hartsough said, "It's in my affidavi

THE COURT: Certainly my memory is different from your memory.

We have been here a long time and I think we better ---

MR. PERSON: Can I have discovery of any kind?

I am making a motion for discovery in order to be able to have equality in terms of presenting my case, because it really is difficult trying to prove this merely by taking pot shots at the stand with respect to people I have never heard of before, never seen these people before. I don't know what they are going to say.

THE COURT: We have a long affidavit which you have given to counsel today right on the spot.

MR. PERSON: Yes. I just finished it and it is not even done.

THE COURT: This is asking for discovery.

MR. PERSON: The typing is incomplete. I am not asking for an immediate answer, obviously, I am merely trying to show you the importance that it is for plaintiffs to get discovery here because there is a restraint, I proved it.

If I can show, for example, with admissions, if I can get admissions of the validity of documents which I have in that affidavit , I think I have a per se, several per se violations of the Sherman Act and the Clayton Act. I have all that spelled out.

I am not asking you to read it now, but it is very clear to me that there are restraints.

THE COURT: You see what happens, Mr. Person, is this, that we have a strenuous and active deposition program going on right now.

MR. PERSON: We don;t even have answers, Your Honor, do you know that?

THE COURT: And you injected a motion for preliminary injunction which, from all that was shown to me on the 19th of this month, that evening was groundless and I think in the course of the time you had to submit affidavits and testimony on the 19th in a four hour hearing and before the 19th, it seems to me that there was a basis for this motion you could have shown it. You showed nothing.

MR. PERSON: There has been a longer time.

THE COURT: Now just a minute.

MR. PERSON: I am sorry, Your Honor.

THE COURT: I have given you additional time, but I am not going to foul up the discovery which I directed and I want to proceed.

I think it has been partially fouled up now. I think the injunction at the preliminary injunction motion was a serious detriment to this discovery program which I wanted to be carried out and I think it was unnecessary. I think you either should have brought this preliminary injunction motion months ago or waited. But

I did hear you that night and heard precious little that was in support of your position.

I am not going to just argue with you, but the main thing I want to do now is to have the deposition program that I have ordered carried out and I do not want General Motors to be engaged in any substantial other discovery until that deposition program is completed. When that deposition program is completed, you will have plenty of discovery if your class action goes forward and there will be ample discovery. But things have to get in a certain order.

This action is too old to be just going along in a disjointed fashion. Nobody was taking any charge of this case to see that it was moving anywhere.

MR. PERSON: The seriousness of the client's condition, I think, is still a problem that isn't resolved by postponing all these things, and that we do have the material problem. I am sure from what Mr. Kaplan has said in his memorandum that nobody reading that memorandum would believe that there is any validity to any claims at all, but I am sitting here as a member of the bar stating that there is a serious problem and I am trying to do everything humanly possible ---

THE COURT: You had a great deal of time to show it.

What is your specific document application right now?

MR. PERSON: I would like to have discovery on three individuals in G.M. who can explain the fleet program. I would like to take depositions of them and have document discovery.

THE COURT: That motion is denied, without prejudice to a renewal after the current program of depositions is completed. Okay?

Any other applications?

MR. PERSON: I guess they are all going to be denied, then. There is no use making them. I set them forth in the affidavit.

THE COURT: All right.

- - - - - - - - - - - - - -

I (We) hereby certify that the foregoing is a true and accurate [illegible] from my (our) stenographic notes of this proceeding.

I (We) hereby certify that the foregoing is a true and accurate [illegible] of my (our) skill and [illegible]

D. Tascione

Official Court Reporter
U. S. District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

NATIONAL AUTO BROKERS CORP., et al., : 70 Civ. 5421(A) TPG

Plaintiffs, : **AFFIDAVIT**

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

- x

CITY OF MANASSAS)
: ss.:
STATE OF VIRGINIA)

WILLIAM G. KEMP, residing at 11005 Homeplace Lane Potomac, Maryland 20854, DOES HEREBY DEPOSE AND SAY:

1. (A) I am the founder, President and principal shareholder of KEMP PONTIAC-CADILLAC, INC., a Connecticut corporation incorporated in 1964 (hereinafter "Kemp"), franchised by General Motors Corporation ("GM") as a Cadillac and Pontiac dealer in New Britain, Connecticut (for 10 months commencing in 1965) and then in Newington, Connecticut (in the Boston Zone of Cadillac) from November 10, 1965 to April 19, 1969 (hereinafter such period being referred to collectively as the "Franchise Period"), am fully familiar with the operations and activities of Kemp as a GM franchisee, and make this affidavit at the request of plaintiff NATIONAL AUTO BROKERS CORP. ("Nabcor") and its President, plaintiff Frank Maiorana, for use in support of Nabcor's motion for a preliminary injunction against GM to have GM ordered to stop interfering with Nabcor's sources of supply of GM automobiles, for resale by Nabcor to customers of Nabcor and/or its franchisees.

(B) Kemp did in excess of $19,000,000.00 worth of net sales in its first 36 months of existence.

2. I would be willing to testify at the adjourned hearing on the preliminary injunction set for April 10, 1973, except that I have already made arrangements to leave for Spain on April 11, 1973, and expect to return on Friday, April 20, 1973, after which date I will be available to attend any further adjourned hearings in the matter. Based on paragraphs 3 - 18 below, Kemp was highly discouraged by GM from (i) selling Cadillacs on a retail basis for delivery outside of Kemp's Territory; (ii) advertising Cadillacs outside of Kemp's Territory; (iii) selling any fleet-allotted cars to other than the designated fleet certificate holder who ordered the car; (iv) selling on a fleet basis to persons who did not have or qualify for a GM fleet certificate; and (v) Intercontinental Leasing Corp. defined below was restrained from participating in the rental car business by Cadillacs denial of a fleet certificate. Also, GM's treatment of orders by fleet certificate holders discriminated against franchised dealers in their efforts to sell Cadillacs at retail.

3. I am the founder, and was President and a principal shareholder of INTERCONTINENTAL LEASING CORP., a Connecticut corporation ("INTERCONTINENTAL") with its principal place of business in Newington, Connecticut engaged from 1967 to 1969 in the business of renting automobiles on a daily or weekly basis to service customers of Kemp and others.

4. Kemp and INTERCONTINENTAL desire to participate in the alleged class of Automobile Retailers by plaintiffs Nabcor, Frank Maiorana, Anthony Maiorana and the other plaintiffs (all Nabcor franchisees and a principal of a Nabcor franchisee), and I feel sure from my 5+ years of experience in the new car automobile business a a principal of a franchised dealership that there is a substantial number of franchised dealers of the major domestic car manufacturers who may have ceased doing business during the past six and one-half years (from December 11, 1966 to the present) who would welcome, if not relish, the opportunity for the representation, as well as a substantial

number of the present franchisees of the major Domestic Automobile Manufacturers, many of which franchisees live in constant fear of factory reprisals including re-allocation of automobiles and non-renewal or cancellation of franchises.

5. During the Franchise Period, the Cadillac Zone (located in Chestnut Hills, Mass.) allotted cars to Kemp for retail sale, each month. (Approximately 6 - 9 Cadillacs per month.)

6. Of the cars allotted by Cadillac Zone to Kemp for retail resale, Kemp was required by its Dealers Selling Agreement with GM (the "Agreement") to sell Cadillacs each year in the Hartford area designated in the Agreement as Kemp's area of responsibility and territory (the "Territory") to avoid a cancellation or non-renewal of the Agreement which was based upon Cadillac Standards for retail sales of Cadillacs in the Territory. Unless Kemp sold all of its retail allotment in the Territory in the prior year, Kemp was threatened it may not obtain an equal allotment for the succeeding year. Inasmuch as Kemp was limited in the number of Cadillacs it could obtain from the Cadillac Zone, the low sales allocation within the Territory highly discouraged Kemp from selling any of its retail allotment of cars to anyone (whether on a fleet or retail basis) for initial registration as a new car outside of the Territory; otherwise, Kemp may suffer a reduction in its retail allotment for the next year by a similar number of cars. Also Kemp was threatened with a reduction in its retail allotment of the current model year to the extent the factory was required to pay Kemp a 5% rebate at the end of current model year unsold new Cadillac cars remaining in inventory. Kemp was threatened that if any new current model Cadillacs were not shown as sold (even though they weren't in many cases) a like amount of the new models would be deducted from the allotment of new model year cars shipped to Kemp. Kemp was therefore instructed by Cadillac to hide the remaining current model Cadillac carry over in order to receive the full allocation of new models and the factory avoided paying

the 5% rebate to Kemp.

7. The GM fleet certificate is not just a means for GM to obtain marketing information. The fleet certificate is a license for the holder (such as Hertz and Avis) to purchase new automobiles on a fleet (i.e. wholesale) basis through any willing GM dealer, whereas fleet purchasers who cannot obtain a fleet certificate are unable to buy any cars at all through a fleet allotment, even though they may actually in some cases buy more cars than certain holders of fleet certificates. The fleet certificate _is_ required by GM to obtain a fleet allotment of Cadillacs. Also, the fleet certificate entitled holders thereof to purchase parts on a wholesale basis from Kemp without exception, whereas parts would not be sold by Kemp on a wholesale basis to persons not possessing the fleet certificate. Kemp was following the instruction of GM set forth in the fleet certificate itself, which in no way suggests that dealers are "encouraged" or "permitted" to sell parts on a wholesale basis. Instead, the certificate states that fleet certificate holders have the advantage of buying parts on a wholesale basis. which Kemp took to mean that Kemp was required to follow. No contrary instructions, oral or in writing, were ever received from GM.

8. A fleet certificate holder is given a fleet "allotment" by GM consisting of the number of cars the fleet certificate holder indicates to GM he possibly may need during the year (which number is usually equal to or greater than the actual expected requirements). Thus, the fleet allotment is not a _limitation_ for the fleet certificate holder, unlike the dealer's retail allotment. The fleet certificate holder's allotment does not belong to the dealer, but is transferable by the fleet purchaser from one dealer to another, from whom the fleet purchaser may choose to order one or more cars chargeable to the overall allotment. The dealer through whom a fleet order is placed will indicate to the factory or a dealer the name and fleet certificate number of the certificate holder, and the automobile will be built, and shipped to the ordering dealer designated by the specific fleet certificate holder. In no way is the franchised dealer free to sell this car

to any other purchaser (whether retail or fleet) in absence of any subsequent default by the original fleet purchaser who ordered the car. Thus, the fleet allotment is not a number of cars which a dealer is free to sell at retail, or free to sell to any other fleet purchasers for that matter.

9. No cars could be ordered by Kemp on a fleet allotment basis without Kemp first telling the Cadillac Zone the name of the fleet purchaser and the number of the purchaser's GM fleet certificate. If the prospective fleet purchaser did not have a fleet certificate (that is, if its name was not on GM's National Fleet list) an application for a fleet certificate would be made by Kemp to Cadillac Zone, which would send out a Zone representative to inquire whether the prospective purchaser qualified for a fleet certificate. If found qualified by Zone, GM would issue a fleet certificate and allot cars to the fleet certificate holder, thereby permitting a dealer to obtain extra cars (over the dealer;s retail allotment) to the extent of the fleet purchaser's orders through the dealer. But if the prospective fleet purchaser did not qualify for a fleet certificate, no fleet certificate would be issued and the fleet purchaser would not be allotted any cars. In such event, any sale to the fleet purchaser would have to be made out of Kemp's (or other dealer's) retail allotment of cars which was limited in number, making the transaction impossible from an economic and business standpoint. The markup on a fleet sale of a Cadillac was approximately $400.00. If Kemp sold all of its 7 to 9 allocated cars per month on a fleet basis, it would have derived a gross profit of only a small portion versus retail sales profit which would have caused Kemp to run at a substantial loss.

10. Kemp never obtained any fleet allotment during the Franchise Period even though Kemp had submitted applications for fleet certificates and fleet allotments with respect to several prospective fleet (volume) users and also at least two (2) Customers of Kemp: 1. Atlantic Machine Tool, Inc., and 2

BEST COPY AVAILABLE

2. Westwood Auto Leasing, Inc. (see Exhibit B hereto) Kemp was notified by the Cadillac Zone that neither prospective customer qualified for a fleet certificate and the Zone denied Kemp a fleet allotment for both prospective purchasers. Lyle Blossom, then a Cadillac Zone official in Hartford told both the affiant and Kemp's Fleet Sales Manager, Lawrence Kelleher, that GM needed a fleet certificate in order for Kemp to get extra cars to sell to Atlantic Machine & Tool, Inc. (on a fleet basis). Mr. Kelleher supplied the automobile purchase statistics for Atlantic for the previous several years, but the Cadillac Zone turned Atlantic down for a fleet certificate and Kemp was refused the fleet allotment of extra cars to sell to Atlantic. Also, INTERCONTINENTAL was turned down by GM in 1967-68-69 for a fleet certificate for its rental and lease business, which has prevented INTERCONTINENTAL from buying any Cadillac cars through GM dealers on a fleet basis. All cars had to be purchased out of the dealers' retail quotas at higher prices.

11. The Spring of the year was usually requested by Cadillac for the submission of applications for fleet certificates. However, Prospective fleet purchasers who applied for fleet certificates in mid-year would be granted a fleet certificate if qualified and GM would supply the new fleet certificate holder with a supply of cars (fleet allotment) out of the fleet "pool", which was set aside by GM to meet the requirements of these new fleet purchasers. Kemp and other GM dealers were encouraged to look for new fleet business at all times of the year.

12. Every order submitted by Kemp to GM was marked at the upper right hand corner by the checking of one of the following:

Pre-sold retail

Stock

Fleet

Rental

Fleet and rental orders required a fleet number by GM Zone.

BEST COPY AVAILABLE

When fleet or rental orders were delivered to Kemp, they were identified as to the particular fleet certificate holder.

13. No cars allotted to a Cadillac dealer on a fleet basis could be sold by the dealer (whether on a retail or fleet basis) because the car was allotted to and designated for the specific fleet certificate holder for whom the car was ordered. Only if the fleet certificate holder, after ordering a car through the dealer, refused to accept delivery for any reason would the car be available for sale to the dealer for sale (either on a fleet or retail basis).

14. Kemp was required by Cadillac Zone to keep records of any fleet transactions and the data which qualified prospective fleet purchasers for the issuance of a GM fleet certificate for inspection by GM.

15. GM Cadillac Division has never solicited any fleet business for the benefit of Kemp, and has not directed any fleet business to Kemp, even though Kemp had one full-time fleet sales manager and one additional fleet employee. The only Cadillac fleet business which was generated by Kemp and was refused by Cadillac, which prevented Kemp from doing the fleet business by GM's refusal to give Kemp a fleet allotment. See paragraph 10 above. Inasmuch as fleet sales are made at prices substantially lower than retail prices, if no fleet allotment is granted the sale cannot be made. Kemp would have lost money if it made the fleet (wholesale) sales out of its retail allotment since such retail allotment was limited in number to about 7 to 9 cars per month.

16. Kemp and the other Cadillac dealers were heavily discouraged from advertising Cadillacs outside of its territory. This prohibition was well known to all Cadillac dealers and never repudiated by GM. No Cadillac dealer to my knowledge ever ran advertisements in newspapers, or on radio or television, in areas outside of its own territory. The result would have been a severe reprimand by GM or possibly a cancellation or non-renewal of the Agreement.

17. Even though Kemp repeatedly petitioned the Cadillac Zone officials for fleet certificates and allocations for same from bonafide fleet qualified customers, Kemp cannot recall in its over 4 years history being granted any such allocations for its fleet users or its' own INTERCONTINENTAL LEASING CORP. Kemp was further restrained by Cadillac from transferring existing fleet users from agencies previously used to Kemp's even though same was requested by user in writing as exhibited.

18. The only other franchised Cadillac dealership who shared the Territory with Kemp had an allotment of Cadillacs four to six times greater than Kemp even though Kemp's facilities were equal to or better than the favored dealer given the higher allocation by Cadillac. Repeated requests to Cadillac by Kemp to increase its' allocation of Cadillacs to be in line with that of its' competitor was always refused by Cadillac.

Dated: April 9, 1973

William C. Kemp

Subscribed and sworn to before
me this 9th day of April, 1973.

Notary Public
My commission expires 11/30/75

Ex. 72

A 286

CADILLAC MOTOR CAR DIVISION

GENERAL MOTORS CORPORATION

DETROIT, MICHIGAN 48232

STANDARD OF THE WORLD

assist a smooth deployment in your department would be [illegible] satisfactory to us. I would leave this [illegible] your capable judgement. [illegible]

Please be advised that [illegible] June 22, 1966 that we do receive an allocation, it will be [illegible] through our company.

Thank you for any consideration you may give this [illegible]

TO: ALL CADILLAC DEALERS - BOSTON ZONE

Best regards

Sincerely yours

cc. Mr. J. S. Badger, Zone Mgr.

Again it is contemplated Cadillac will make available a very limited number of extra allotment cars to dealers for selected Rental and Leasing companies, as well as to dealers with their own leasing companies for the 1967 Model Year.

As in previous years, no cars will be specially allotted during the first 30 days following Announcement Day. In order to maintain a more uniform rate of production, suggest to your leasing customers that they request their minimum requirements at the rate of about 12% of their total in November; [illegible] in December: 15% in January; 13% in February; 17% in March; [illegible] in April; 12% in May; and 6% in June in a letter to you and forward this letter or a copy to the attention of Mr. J. D. [illegible], Car Distributor Boston Zone, before July 25, 1966.

Please understand, however, that the Cadillac Motor Car Division is not encouraging leasing business at the expense of retail [illegible] as it applies to you and your customers is fairly and equitably administered.

Very truly yours,

J S Badger

J. S. Badger
Zone Manager

Letter

JSB/ao

Dear Jim

Pursuant to Mr. Badger's letter of June [illegible] all dealers [illegible] of special leasing [illegible] for the 1967 model year, [illegible] have established a leasing division of [illegible] and in receipt of a further letter [illegible]

Dear John,

~~Pursuant to your letter of June [illegible] regarding your allotment [illegible] for leasing and rentals, advise [illegible] me how we may go about getting a few [illegible] for N.W. Kemp Leasing Division. Last year [illegible] permitted a few months to help us get [illegible] started and we would like some [illegible] for the future year. It seems hard to [illegible] [illegible] [illegible] while others [illegible] and 100.~~

~~Any clarification you may give this matter will be greatly appreciated.~~

Best regards.

[illegible] June 9 advising that the Cadillac [illegible] will [illegible] to furnish a few units for [illegible] coming model year. Please be advised that we feel our market is approximately 20 units per month [illegible] and any contribution you could make toward this would be most ~~greatfully~~ helpful. While you may not be in a position to furnish 20 units, any amount would be helpful in ~~our~~ establishing our position in this most [illegible] market. Naturally, the earlier we receive units for [illegible] in the model year, the better; but since we are [illegible] establishing this phase of our business, we have no [illegible] [illegible] will be needed. Therefore, [illegible]

PHONE 757

A. A. Holiday
RENT-A-CAR INC.

DIAL
L-E-A-S-I-N-G
532-7464

633 N. E. 79TH STREET - MIAMI, FLORIDA

Ex. A

A 288

January 3, 1968

Mr. William Kemp
Kemp Pontiac Cadillac, Inc.
550 Cedar Street
Newington, Connecticut

Dear Bill:

Our mutual friend, Jim Rathmann of Rathmann Cadillac in Melbourne, referred me to you recently. We are very heavy in the leasing and fleet business in Florida and buy a major portion of our needs from Jim. At present, we have approximately 650 cars on lease and 250 - 300 on daily rental. Much of our lease business is comprised of Cadillacs, Lincolns and Chryslers.

We are, at present, seriously considering opening a branch operation in the Hartford area and wonder if you will be in a position to furnish us with Cadillacs. We have a fleet certificate and allocation here, but would like for you to approach your zone office regarding getting us started up there. Also, I would appreciate your suggesting a good Lincoln and Chrysler dealer with whom we can work. I'm sure you must know someone.

Please let me hear from you soon as my plans are greatly dependent [illegible].

Sincerely yours,

Chester Kay
A. A. HOLIDAY RENT-A-CAR INC.

CK:mm

A 289

January 3, [illegible]

Mr. Chester Kay
A. A. Holiday Rent-A-Car Inc.
[illegible] N. W. [illegible] Street
Miami, Florida

Dear Chester,

I have your letter and am pleased that Jim [illegible] you. You may be sure that, although we are a [illegible] dealer, we are hopeful that our good friends in [illegible] help us with your request. I am writing them to [illegible] there is any hope for now or in the future and I will let you have their answer as soon as possible.

Sincerely,

William G. [illegible]

WGK/ms

A . 300

January 9, 1960

Mr. John Badger
Cadillac Motor Division - GMC
330 Boylston Street
Chestnut Hills, Massachusetts

Dear John:

Please find enclosed a letter to a Mr. Chester [illegible] in which he is planning on setting up a leasing [illegible] in Hartford and wishes us to furnish him cars. Would you please let me know the status of such a request and what you can do for him and us.

Kindest personal regards.

Sincerely,

William G. Kemp
President

WGK:mo
Enclosure

cc: Mr. Lyle Blossom

January 12, 1968

Mr. Chester Kay
A. A. Holiday Rent-A-Car Inc.
633 N. W. 79th Street
Miami, Florida

Dear Chester,

Attached is the correspondence which we have sent to the [illegible] Cadillac Zone Manager in an effort to establish an [illegible] for you. We will let you know the results as soon as we [illegible] from the Zone. Best personal regards.

Sincerely,

William G. [illegible]
President

WGK:ms

Ex. P8

A 302

February 20, 1968

Mr. John Badger
Cadillac Motor Division
220 Boylston Street
Chestnut Hills, Massachusetts

Dear John,

We have been actively soliciting lease company business so that we may have a larger share in this market. We anticipate receiving a portion of the allotment of a leasing company which is large enough to be a national account presently being distributed from Cadillac Central Office.

Since the company officials and I have been friendly for a number of years, they plan to give our firm a substantial portion of their allotment in the 1969 model year which they presently purchase from a New Jersey dealer. The balance of their allotment has come from a dealer in the Boston Zone and they will continue to purchase the same from him. Is there any reason why we cannot accept this allotment since, then, if granted us, all allocation would go to two dealers both in the Boston Zone?

I would appreciate an answer at your earliest convenience.

Sincerely,

William G. Kemp
President

WGK:ms

Ex. P-9

A 303

Bill Kemp Pontiac Cadillac

HARTFORD PHONE 666-1481 or 243-8559
NEW BRITAIN PHONE 223-2296

KEMPCO INC.

[illegible] CEDAR STREET • NEWINGTON, CONNECTICUT • [illegible]

February [illegible], 19[illegible]

Mr. Philip Engelsbe
Director of Management Operations
American Cyanamid
Wayne, New Jersey

Dear Mr. Engelsbe:

This is to confirm your recent conversation with our Mr. Hughes on our intention to bid on Cadillac automobiles from our agency for use by American Cyanamid.

Our bid is predicated on the fact that the Cadillacs in question must be cars from your fleet allocation and not cars from our regular retail stock. If this is the case, we will supply your Cadillac needs at a price of $400 over dealer cost. All cars must have purchase orders which should be sent directly to the above address.

If you have any questions, please do not hesitate to contact Mr. Hughes or myself.

Sincerely,

Lawrence F. Kelleher
Fleet Manager

LFK:ms

Ex. B

A - 304

Westwood Auto Leasing, Inc.

787 FARMINGTON AVENUE • WEST HARTFORD, CONNECTICUT • Phone 236-5373

Mr. William Kemp
Kemp Pontiac-Cadillac, Inc.
550 Cedar Street
Newington, Connecticut

July 18, 1966

Dear Mr. Kemp:

In accordance with our telephone conversation, please accept this letter as notice of our intent to use your facilities to purchase 1967 Cadillacs for our fleet needs in addition to the majority of our Pontiac requirements.

We anticipate using twelve Cadillacs during the 1967 model run and approximately twenty-four Pontiacs.

Our General Motors fleet number is 4638.

Sincerely,

WESTWOOD AUTO LEASING, INC.

J. G. Fenton,
Vice President

JGF:dd

Bill Kemp Pontiac Cadillac

KEMPTOWNE

550 CEDAR STREET • NEWINGTON, CONNECTICUT • PHONE 666-1481

IL[illegible]RD PHONE 666-1481 or 249-8559
NEW BRITAIN PHONE 229-2086

365

August 3, 1967

Mr. R. K. Wolstenholme
General Motors Corporation
Cadillac Division
220 Boylston Street
Chestnut Hill, Massachusetts

Dear Mr. Wolstenholme:

In regards to Westwood Auto Leasing, Inc., we have a commitment to them for seven to ten Cadillacs per year.

Sincerely,

Ronald Wellins
General Manager

RW:ms

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

NATIONAL AUTO BROKERS CORP., et al., : 70 Civ. 5421(A) TPG

Plaintiffs, : AFFIDAVIT

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

- -x

STATE OF CONNECTICUT)
: ss.:
COUNTY OF HARTFORD)

LAWRENCE F. KELLEHER, residing at 126 Robindale Drive, Town of Berlin, State of Connecticut, DOES HEREBY DEPOSE AND SAY:

1. I was the fleet sales manager of KEMP PONTIAC-CADILLAC, INC. (hereinafter "Kemp"), franchised by General Motors Corporation ("GM") as a Cadillac and Pontiac dealer in Newington, Connecticut (in the Boston Zones of Cadillac and Pontiac), and was employed by Kemp from April, 1967 to February or March, 1969 and stayed on until June, 1969 for the purchaser of the business from its owner, William G. Kemp (the "Employment Period"), am fully familiar with the operations and activities of Kemp as a GM franchisee, and make this affidavit at the request of plaintiff NATIONAL AUTO BROKERS CORP. ("Nabcor") and its President, plaintiff Frank Maiorana, for use in connection with Nabcor's motion for a preliminary injunction against GM to have GM ordered to stop interfering with Nabcor's sources of supply of GM automobiles.

2. Kemp was unable to (i) sell Cadillacs on a retail basis for delivery outside of Kemp's territory because of the basis for determining GM's retail allotment to Kemp for the next model year; (ii) advertise Cadillacs or Pontiacs outside of Kemp's territory; (iii) sell cars under fleet allotments to anyone other than the fleet certificate holder who ordered the car through Kemp; and (iv) sell on a fleet (wholesale) basis to persons who did not have or qualify for a GM fleet certificate.

2. During the Employment Period, the Cadillac Zone allotted cars to Kemp for retail sale, which retail allotment was told to Kemp orally by the Zone roadman (Lyle Blosson) or by telephone conversation with the Zone Distribution Manager, and was then confirmed by the Zone in writing to Kemp by GM Zone's mailing to Kemp each month of the "30-day Forecast". Kemp was allotted approximately 10-11 cars each month (which ranged from a low of 6-7 to a high of approximately 14).

3. GM let Kemp know regularly by its Zone personnel that GM insisted strongly that the cars alloted to Kemp for retail resale were to be sold in the area designated in GM's agreement with Kemp as Kemp's territory (the "Territory") or risk a reducti in Kemp's retail allotment. Unless Kemp sold and delivered all of its retail allotment in Kemp's territory in a model year, GM indicated that Kemp would obtain from GM a smaller allotment of Cadillacs for the next model year. Inasmuch as Kemp was limited in the number of Cadillacs it could obtain from Cadillac Zone, this sales requirement within Kemp's territory prevented Kemp from selling any of its retail allotment of cars to anyone for delivery outside of Kemp's territory; otherwise, Kemp would risk losing its retail allotment by the same number of cars in the next model year.

4. To enable a volume purchaser of cars to buy cars from Kemp on a fleet (wholesale) basis, Kemp was required to prov to GM that the purchaser had a certain minimum volume of new car purchases and was either a rental company, leasing company or a volume user (such as a large company with many salesmen). Upon approval by GM of the application for a fleet certificate, GM wou issue a fleet certificate to the purchaser and would give the purchaser a new "fleet allotment" of cars. If a volume purchaser did not have a fleet certificate, or a fleet certificate number, no fleet allotment could be obtained from GM and any sales by Kemp would have to be made out of Kemp's retail allotment as above.

5. The fleet certificate holder's allotment does not belong to the dealer, but is transferable by the fleet purchaser from one dealer to another, from whom the fleet purchaser may choose to order one or more cars chargeable to the overall fleet allotment of the fleet certificate holder. The dealer through whom a fleet order is placed will indicate to the factory the fleet certificate number of the fleet certificate holder. The dealer is not free to sell the car to any other purchaser (whether retail or fleet sale) in absence of any agreement, possibly, or any default by the original fleet purchaser who ordered the car. The fleet allotment is not a number of cars which a dealer is free to sell at retail on a fleet basis to any purchaser, but only to the purchaser who obtained the fleet allotment (subject to the exceptions indicated previously in this paragraph).

6. No cars could be ordered by Kemp on a fleet allotment basis without Kemp first telling Cadillac Zone the name of the fleet purchaser and the number of the purchaser's fleet certificate. If an attempted fleet order by Kemp did not have a fleet certificate number accompanying the fleet order by Kemp, GM Zone would send back the order for a fleet number. Without the number, Kemp was required to sell any Cadillacs or Pontiacs out of Kemp's "retail allotment", according to Zone Man Lyle Blossom (as to Cadillacs). After issuance of the fleet certificate, GM would allot cars to the fleet certificate holder, which permitted the holder to order cars through any dealer he designated. But if the prospective fleet purchaser did not qualify for a fleet certificate, no fleet certificate would be issued and the fleet purchaser would not be allotted any cars on a fleet allotment basis. In such event, any sale to the fleet purchaser would have to be made out of the dealer's retail allotment of cars which was limited in number (at least as to Cadillacs) and therefore difficult to make from an economic or business standpoint. The markup on a fleet sale of a Cadillac was as low as [illegible], plus the 2% holdback, which made taking the fleet differential over the [illegible]

[illegible]

7. Kemp never obtained any fleet allotment for any of its fleet customers during the Employment Period even though Kemp had submitted an application in 1968 for a fleet certificate and fleet allotment for Atlantic Machine and Tool, Inc. Kemp's President, William G. Kemp, told affiant that he was notified by the Cadillac Zone that Atlantic Machine and Tool, Inc. ("Atlantic") did not qualify for a fleet certificate and that the Zone denied Atlantic a fleet allotment, and that GM needed a fleet certificate in order for Kemp to get extra cars to sell to Atlantic. Affiant supplied the automobile purchase statistics for Atlantic for several years but GM Zone turned Atlantic down for a fleet certificate and refused the fleet allotment of extra cars for Kemp to sell to Atlantic. Also, Mr. Kemp told affiant that GM Zone turned down an application for a fleet certificate for affiliate Intercontinental Leasing Corp, a company in the car rental and leasing business using about 8-10 at any one time, but purchasing about 20 cars per year because of the turnover of cars.

8. No time of the year was required by GM for the submission of applications for fleet certificates. Prospective fleet purchasers who applied for fleet certificates during the middle of the model year would be granted a fleet certificate (if qualified) without any limitation known to affiant. Kemp and other GM dealers were told they could look for new fleet business at all times of the year.

9. Every order submitted by Kemp to GM was marked at the top of the order form by the checking of one of the following items of information: Pre-sold retail; Stock; Fleet; or Rental. And every fleet order of Kemp included the name and fleet number of the fleet purchaser. Fleet orders by Pontiac fleet customers obtained a preferential treatment in handling, by the expediting of manufacture and delivery, according to Pontiac Zone. He called Zone each time to alert them to a fleet order coming from Kemp. When fleet orders were delivered to Kemp, the [illegible] identified as to the name of the [illegible]

10. No fleet cars allotted by GM to a fleet certificate holder could be sold by the dealer (whether on a retail or fleet basis) to any other customer because the car was allotted to and designated for the specific fleet certificate holder for whom the car was ordered without the permission, possibly, of the fleet certificate holder.

11. GM has never solicited any fleet business for the benefit of Kemp, to affiant's knowledge, and has not directed any fleet business to Kemp, even though Kemp had affiant as a fleet sales manager and an additional fleet employee (Jerry Hughes), who was an expert in fleet sales. New Cadillac fleet business of Kemp was refused by Cadillac Zone, which prevented Kemp from doing the fleet business, by GM's refusal to give Kemp's customer (Atlantic) a fleet certificate and allotment. Inasmuch as fleet sales are made at reduced prices, and because no fleet allotment was granted, the sale to Atlantic could not be made on a fleet basis. Kemp would have lost money if it made the fleet (wholesale) sale out of its retail allotment which was limited in number to about 10-11 cars per month.

12. When Kemp was located in New Britain (1965-6), I was working for the New Britain Herald, and was told by Mr. Kemp that he was not allowed by the GM Zone to advertise either new Cadillacs or Pontiacs outside of the New Britain metropolitan area. This prohibition on dealer advertising was known to all GM dealers. No Cadillac or Pontiac dealer to my knowledge ever ran new-car advertising in newspapers, or on radio or television, in areas outside of the dealer's own territory. I know that as a newspaper advertisement solicitor from my contacts with various GM dealers that the dealers were prevented by GM from advertising in newspa outside of their respective territories.

13. The freight charge or destination charge added to GM's price for Cadillacs and Pontiacs was required to be paid by Kemp, even when Kemp picked up a car at Zone (in Allston, Mass., 100 miles away), and could not be avoided by Kemp's use of its own means of transportation.

Dated: April 7 , 1973.

Lawrence F. Kelleher

Lawrence F. Kelleher

Subscribed and sworn to before
me this 7th day of April, 1973.

Notary Public

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ALFRED C. LARSON, being duly sworn, deposes and says:

That on the 8th day of April, 1973, affiant served the annexed and foregoing affidavit of Lawrence F. Kelleher (hereinafter "DOCUMENT") on all Defendants' attorneys named in the list of attorneys attached to the DOCUMENT, by depositing in the United States Post Office at Vesey Street and Church Street, New York, New York, a copy of the DOCUMENT addressed as set forth on said list, the last known address of each of said Attorneys, respectively.

/s/ ALFRED C. LARSON

ALFRED C. LARSON

Subscribed and sworn to before me this 8th day of April, 1973.

/s/ CARL E. PERSON

Notary Public

[illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

NATIONAL AUTO BROKERS CORP., et al.,

Plaintiffs, : 70 Civ. 5421A (TPG)

-against- : AFFIDAVIT

GENERAL MOTORS CORPORATION, et al.,

Defendants. :

---x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LEWIS A. KAPLAN being duly sworn, says:

1. I am a member of the bar of this Court and am associated with Paul, Weiss, Rifkind, Wharton & Garrison. attorneys in this action for defendants General Motors Corporation ("GM"), General Motors Acceptance Corporation ("GMAC"), Frederic G. Donner and James M. Roche. I make this affidavit in opposition to plaintiffs' motions for orders determining that counts 1-7, 14-17 and 18-27 of the complaint may be maintained as class actions by plaintiffs. It is submitted on behalf of defendants GM, GMAC, Donner, Roche, Ford Motor Company, Grand Ford, Inc., Robin Ford Sales, Inc., Gotham Ford, Inc., Chrysler Corporation and American Motors Corporation.

2. The defendants on behalf of whom this affidavit is submitted are opposed to plaintiffs' motions in all respects.[/] Most of the factual material relied upon in opposition to these motions is contained in the depositions taken in this action by GM and other defendants, exhibits marked thereon, affidavits submitted in support of and evidence adduced at the hearing on plaintiffs' motion for a preliminary injunction and certain other papers and proceedings had in this action.

3. We submit herewith for the convenience of the Court copies of pertinent material, which is contained in two volumes labeled "Excerpts from Depositions and Preliminary Injunction Hearing Testimony Referred to in Joint Memorandum of Certain Defendants in Opposition to Plaintiffs' Motions for Class Action Determination" and "Exhibits from Depositions and Preliminary Injunction Hearing Referred to in Joint Memorandum of Certain Defendants in Opposition to Plaintiffs' Motions for Class Action Determination."

4. In addition to the foregoing materials, reference is made in the joint memorandum to various other documents, some of which have not previously been made a part of the record in this action, true copies of which are attached as exhibits hereto. A list of the exhibits, together with descriptions of the materials involved, follows:

[/] Chrysler Corporation and American Motors Corporation are not parties to counts 1-4 of the complaint.

Complaints in Actions Against Nabcor by Nabcor Brokers

Exhibit 1	Complaint, Glines v. Nabcor, Incorporated, Court of Common Pleas, Montgomery County, Pa., No. 71-09638. This is a copy of Exhibit G to second supplemental answer of plaintiff National Auto Brokers Corp. to first set of interrogatories, filed Nov. 17, 1972 (hereinafter "Nabcor second supplemental answer").
Exhibit 2	Complaint, Tannenbaum v. Nabcor, Inc., Court of Common Pleas, Montgomery County, Pa., No. 67-15844. This is a copy of Exhibit E to supplemental answer of National Auto Brokers Corp. to first set of interrogatories, filed Aug. 14, 1972 (hereinafter "Nabcor supplemental answer").
Exhibit 3	Complaint, Hetrick v. Nabcor, Incorporated, Court of Common Pleas, Montgomery County, Pa., No. 70-01524. This is a copy of Exhibit G to Nabcor supplemental answer.
Exhibit 4	Complaint, Covello v. Nabcor, Inc., Court of Common Pleas, Montgomery County, Pa., No. 70-07648. This is a copy of Exhibit I to Nabcor supplemental answer.
Exhibit 5	Complaint, Losty v. Nabcor, Inc., Court of Common Pleas, Montgomery County, Pa., No. 69-1918. This is a copy of Exhibit J to Nabcor supplemental answer.
Exhibit 6	Complaint, Al Skinner Car Sales, Inc. v. Nabcor, Inc., New York Supreme Court, Nassau County, Index No. 7323/68. This is a copy of Exhibit F to Nabcor supplemental answer.
Exhibit 7	Complaint, Piper v. Nabcor, Inc., Court of Common Pleas, Philadelphia County, Pa., No. 1313, June Term 1970. This is a copy of Exhibit H to Nabcor supplemental answer.

Exhibit 8	Complaint, Penn Delaware Motors, Inc. v. Nabcor, Inc., Court of Common Pleas, Montgomery County, Pa., No. 72-08873. This is a copy of the original on file in the office of the prothonotary of Montgomery County, Pa. It was not produced by plaintiffs although called for by defendants' first set of interrogatories.
Exhibit 9	Complaint, Mesirov and Gerson v. Nabcor Inc., Court of Common Pleas, Montgomery County, Pa., No. 70-03412. This is a copy of Exhibit D to Nabcor supplemental answer.
Exhibit 10	Complaint, Vermilyea v. Nabcor, Inc., New York Supreme Court, Albany County. This is a copy of Exhibit H to Nabcor second supplemental answer.
Exhibit 11	Summons and complaint, Soloff Auto Sales & Leasing, Inc. v. Nabcor, Inc., City Court of Mt. Vernon, New York. This is a copy of part of Exhibit 2 to third supplemental answer of plaintiff National Auto Brokers Corp. to first set of interrogatories, filed Nov. 17, 1972 (hereinafter "Nabcor third supplemental answer").
Exhibit 12	Summons and verified complaint, Inwood Discount Motors, Inc. v. Nabcor, Inc., New York Supreme Court, New York County. This is a copy of part of Exhibit 3 to Nabcor third supplemental answer.
Exhibit 13	Summons, Sipa v. Nabcor Incorporated, Court of Common Pleas, Montgomery County, Pa. This is a copy of Exhibit C to Nabcor supplemental answer.

Answers of Nabcor in Actions Against it by its Brokers

Exhibit 14	Tannenbaum v. Nabcor, Inc., Court of Common Pleas, Montgomery County, Pa., No. 67-15844. This is a copy of the original on file in the office of the prothonotary of Montgomery County, Pa.
Exhibit 15	Al Skinner Car Sales, Inc. v. Nabcor, Inc., New York Supreme Court, Nassau County, Index No. 7323/68. This is a copy of part of Exhibit 5 to Nabcor third supplemental answer.
Exhibit 16	Mesirov and Gerson v. Nabcor, Inc., Court of Common Pleas, Montgomery County, Pa., No. 70-3412. This is a copy of part of Exhibit 1 to Nabcor third supplemental answer.
Exhibit 17	Soloff Auto Sales & Leasing, Inc. v. Nabcor, Inc., City Court of Mt. Vernon, New York. This is a copy of part of Exhibit 2 to Nabcor.
Exhibit 18	Inwood Discount Motors, Inc. v. Nabcor, Inc., United States District Court, Southern District of New York, 67 Civ. 194. This is a copy of part of Exhibit 3 to Nabcor third supplemental answer.
Exhibit 19	Glines v. Nabcor, Incorporated, Court of Common Pleas, Montgomery County, Pa., No. 70-09638. This is a copy of part of Exhibit 4 to Nabcor third supplemental answer.
Exhibit 20	Hetrick v. Nabcor, Incorporated, Court of Common Pleas, Montgomery County, Pa., No. 70-1524. This is a copy of part of Exhibit 6 to Nabcor third supplemental answer.
Exhibit 21	Covello v. Nabcor, Inc., Court of Common Pleas, Montgomery County, Pa., No. 70-07648. This is a copy of part of Exhibit 7 to Nabcor third supplemental answer.

Exhibit 22	Vermilyea v. Nabcor, Inc., New York Supreme Court, Albany County. This is a copy of part of Exhibit 8 to Nabcor third supplemental answer.
Exhibit 23	Losty v. Nabcor, Inc., Court of Common Pleas, Montgomery County, Pa., No. 69-1918. This is a copy of part of Exhibit 9 to Nabcor third supplemental answer.

Judgments and Decisions Against Nabcor in Actions by its Brokers

Exhibit 24	Judgment, Al Skinner Car Sales v. Nabcor, Inc., New York Supreme Court, Nassau County, Index No. 7323/68. This is a copy of part of Exhibit 5 to Nabcor third supplemental answer.
Exhibit 25	Judgment, Soloff Auto Sales & Leasing, Inc. v. Nabcor, Inc., City Court of Mt. Vernon, New York. This is a copy of part of Exhibit 2 to Nabcor third supplemental answer.
Exhibit 26	Oath of arbitrators report and aware, Losty v. Nabcor, Inc., Court of Common Pleas, Montgomery County, Pa., No. 69-1918. This is a copy of the original on file in the office of the prothonotary of Montgomery County, Pa.
Exhibit 27	Findings of fact and conclusions of law and decision and judgment of Mr. Justice Hunt in Vermilyea, Inc. v. Nabcor, Inc., New York Supreme Court, Albany County. These are copies of part of Exhibit 8 to Nabcor third supplemental answer.

Proceedings Involving Mr. Person

Exhibit 28	Petition in proceeding entitled State of New York v. Carl E. Person, et al., New York Supreme Court, New York County, Index No. 41029/73. This is a copy of the original on file in the New York Supreme Court.
Exhibit 29	Summons with endorsed complaint, Tabor v. Paralegal Institute, New York Civil Court, New York County. This is a copy of the original on file in the Civil Court.
Exhibit 30	Summons with endorsed complaint, Levy v. Person, New York Civil Court, New York County. This is a copy of the original on file in the Civil Court.
Exhibit 31	Summons with endorsed complaint, Deming v. Paralegal Institute, Inc. and Carl E. Person, New York Civil Court, New York County. This is a copy of the original on file in the Civil Court.
Exhibit 32	Summons and verified complaint, Werbin v. Paralegal Institute, District Court, Nassau County, First District, Mineola Part, Index No. 3610. These are copies of the originals on file in the District Court.

Miscellaneous

Exhibit 33	Additional further answers to second set of interrogatories addressed to plaintiff National Auto Brokers Corp., Frank Maiorana and Anthony Maiorana by defendants General Motors Corporation, et al., verified March 13, 1973. A copy of this document was served on us but the docket does not reflect its filing in the court.

Exhibit 34	National Auto Brokers Corp., statement of income (loss), October 31, 1971 (unaudited). This is a copy of part of Exhibit 11 to Nabcor third supplemental answer.
Exhibit 35	Report of Magistrate Jacobs, June 26, 1972.
Exhibit 36	Letter from Frank Crowne to Frank Maiorana, dated August 2, 1967. This letter was annexed as Exhibit 4.49 to third supplemental answer of plaintiff National Auto Brokers Corp. to first set of interrogatories, filed
Exhibit 37	Pretrial order No. 1.
Exhibit 38	Stipulation dated January 23, 1973.
Exhibit 39	Letter from Ruth D. Appleton, United States Securities and Exchange Commission to Carl E. Person, Esq., dated January 15, 1971. A copy of this letter was produced by Mr. Person pursuant to defendant's second set of interrogatories with notice to produce documents.

Determination of Nabcor Brokers With Possible Claims

5. In the joint memorandum we state that only 33 Nabcor brokers ever had orders cancelled by Nabcor for any reason. We also state that when the brokers whose only cancellations are barred by the statute of limitations or are attributable to reasons plainly unrelated to this action are excluded, the number with orders cancelled drops to 24. An explanation of how those figures were arrived at follows.

6. Our second set of interrogatories with request to produce documents requested Nabcor to "[I]dentify each Nabcor franchisee which ordered a new automobile from or through Nabcor and, for each such franchisee [to] state by year" the number of orders which were cancelled and to provide certain other information pertaining to cancelled orders.

7. Rather than respond directly to the interrogatories, Nabcor produced all of its records "pertaining to new automobiles ordered by Nabcor franchisees from or through plaintiff and all such orders cancelled by each such franchisee."[*]

8. I caused an examination of all the documents produced by Nabcor to be undertaken. That examination revealed that only 33 Nabcor brokers not parties to this action had ever had one or more automobile orders cancelled. The only cancellations for 2 of these brokers appear to have taken place prior to December 10, 1966, the date four years prior to the institution of this action, and any claims based thereon are barred by the statute of limitations. The only cancellations for 3 others occurred in 1972 and are therefore not within the relevant time period. And all of the cancellations for 4 other brokers are eliminated because they were for trucks or foreign cars, which are not covered by this action; are attributed to such causes as personal problems of the customer, orders being placed too late in the model year, and the broker being

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[*] Further answers to second set of interrogatories addressed to plaintiff National Auto Brokers Corp., no. 1, filed Mar. 13, 1973.

unavailable to take delivery; or are barred by the statute of limitations. When these brokers are eliminated, there remain only 24 nonparty Nabcor brokers who had automobile orders cancelled.

Conclusion

9. For the reasons contained in the joint memorandum of certain defendants in opposition to plaintiffs' motions for class action determination, those motions should be denied in all respects.

Lewis A. Kaplan

Sworn to before me this
28th day of June, 1973.

Robert S. Smith
Notary Public

ROBERT S. SMITH
Notary Public, State of New York
No. 31-3743016
Qualified in New York County
Commission Expires March 30, 1975

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J.
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PENN DELAWARE MOTORS, INC.
8300 St. Martins Lane
Philadelphia, Penna.

Ent. Aug. 10, 1972

vs

NABCOR, INC. and
FRANK MAIORANO and
ANTHONY MAIORANO
101 Benson Manor
Township Line and Old York Rd.
Jenkintown, Pa.

Count I - TRESPASS
Count II - ASSUMPSIT

August 10, 1972 Complaint filed.
Aug. 17 1972 Served three defts. (See Sheriff's Return)
Jan 15, 1973 = Appearance of Ronald Israelit Esq for Defts filed.

PENN DELAWARE MOTORS, INC. : COURT OF COMMON PLEAS
8300 St. Martins Lane
Philadelphia, Penna.

vs.

NABCOR, INC.
101 Benson Manor
Township Line and
Old York Road
Jenkintown, Penna.

FILED
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OFFICE OF THE
PROTHONOTARY
MONT'G CO. PA.

72-08873

and

FRANK MAIORANO : TERM, 1972
101 Benson Manor
Township Line and
Old York Road
Jenkintown, Penna.

and

ANTHONY MAIORANO : In Trespass & In Assumpsit
101 Benson Manor
Township Line and
Old York Road
Jenkintown, Penna.

COMPLAINT IN TRESPASS & IN ASSUMPSIT

FIRST COUNT - IN TRESPASS

PENN DELAWARE MOTORS, INC. v. NABCOR, INC. ET AL

1. Plaintiff is a Pennsylvania Corporation whose registered office is located at 8300 St. Martins Lane in the City and County of Philadelphia, Commonwealth of Pennsylvania.

2. Defendant, NABCOR, INC. is a Pennsylvania Corporation engaged in the sale of new and used automobile franchises carrying the name NABCOR.

3. Defendant, FRANK MAIORANO, is an individual whose principal

place of business is 101 Benson Manor, County of Montgomery, Commonwealth of Pennsylvania.

4. Defendant, ANTHONY MAIORANO, is an individual whose principal place of business is 101 Benson Manor, Township Line and Old York Road, Montgomery County, Commonwealth of Pennsylvania.

5. During April and May 1969, the Defendant, NABCOR, INC. through and by its President, the Defendant, FRANK MAIORANO and its Secretary, the Defendant, ANTHONY MAIORANO, met on several occasions with John P. Poth, the President of Plaintiff, in an effort to induce the Plaintiff to enter into an agreement to become a NABCOR Master Distributor.

6. The Defendants, FRANK MAIORANO and ANTHONY MAIORANO on their own behalf, and as President and Secretary respectively of Defendant, NABCOR, INC., in order to induce Plaintiff to enter into a certain agreement dated June 2, 1969, entitled Nabcor Master Distributor Franchise Agreement, attached hereto and marked as Exhibit "B", made falsely and fraudulently material representations of facts as follows:

a. The Defendant, NABCOR, INC., purchased new motor vehicles (automobiles) directly from all domestic manufacturers and certain foreign automobiles manufacturers which automobiles were dropped shipped by the manufacturer to the nearest local dealer agency.

b. The Defendants, FRANK MAIORANO and ANTHONY MAIORANO, exhibited to the Plaintiff representative copies of alleged executed purchase orders bearing NABCOR, INC. direct account numbers and proof of NABCOR'S ability to buy direct from all the domestic automobile manufacturers.

c. The Defendant, NABCOR, INC., had established a complete nationwide system of master distributors and subdistributors to sell new and used automobiles through its comprehensive program.

d. The Defendant, NABCOR, INC., had a nationwide advertising program which would substantially increase Plaintiff's profits.

e. The Defendant, NABCOR, INC., had developed its program to the extent that the master and subdistributors had only to follow its thoroughly detailed and proven program, which left no questions unanswered and required no previous experience or knowledge of the automobile business.

f. The Defendant, NABCOR, INC., would thoroughly and completely train the Plaintiff and its subdistributors through a total indoctrination program, training seminar, manuals and on the job-type training [illegible] the selling of new and used cars for the leasing, financing, and insuring of new automobiles and for the valuating and handling of trade-ins by new car buyers.

g. The Defendant, NABCOR, INC., had developed a complete insurance and financing program which would make the sale of new and used automobiles easy and would substantially increase Plaintiff's profits.

h. The Defendant, NABCOR, INC., had developed a complete leasing program which would substantially increase Plaintiff's profits.

i. Defendant, NABCOR, INC., would in a timely manner supply the Plaintiff and each of its area distributors and brokers with manuals which list each automobile manufactured by domestic manufacturers, the price to be charged the buyer, together with each accessory, option or extras offered by said manufacturers at the actual cost thereof. The manuals were to be prepared and distributed in a timely manner by the Defendant, NABCOR, INC., who would keep same current by replacing or revising them as conditions would require. The brokers and/or area distributors were to determine the cost and selling price of each automobile solely by referring to these manuals and were instructed to allow the buyer to use said manuals to determine the automobile sales price as well as the price for each optional extra offered by the manufacturer.

j. The Defendant, NABCOR, INC., would handle all the "paper work" in registration, transferring the manufacturer's warranty, financing, and insuring of new and used automobiles in an efficient, timely and experienced manner.

k. The Defendant, NABCOR, INC., required of its master distributors only to forward the properly completed NABCOR Purchase Order with the required deposit to NABCOR, INC., and that NABCOR, INC., would notify the Plaintiff when the automobile could be picked up. The Plaintiff was to pay the balance due on delivery.

l. Defendant, NABCOR, INC., agreed to secure and supply area distributors for the Plaintiff at a cost of Twelve Hundred Fifty ($1,250.00) Dollars per area distributor.

m. The system of the Defendant, NABCOR, INC., would enable Plaintiff to undersell all competition from regularly franchised automobile dealers. NABCOR would deliver to the Plaintiff new automobiles from all domestic and several foreign manufacturers at the actual price the factory charged its dealers, plus the factory authorized dealer "get ready" charges. The Defendant, NABCOR, INCORPORATED, set the resale price to be charged by the Plaintiff and/or its subdistributors at Two Hundred ($200.00) Dollars over the cost to the Plaintiff to be allocated as follows:

Defendant, NABCOR, INC.,	$10.00
Plaintiff, Master Distributor	$40.00
Area Distributor	$50.00
Broker	$100.00
Total	$200.00

n. The Defendants FRANK MAIORANO and ANTHONY MAIORANO furnished the Plaintiff with a brochure entitled NABCOR Master Distributor attached hereto and marked Exhibit "A", which showed that the first year's minimum profit for a Master Distributor would be about Three Hundred Eighty Four Thousand ($384,000.00) Dollars based on ten (10) area distributors.

7. The facts as to operation, administration and profitability of the NABCOR., INC. system were particularly within the knowledge of Defendants FRANK MAIORANO and ANTHONY MAIORANO as individuals and as President and Secretary respectively of Defendant, NABCOR, INC., inasmuch as they were familiar with the said system; and prior to the making of the representations of fact as set forth in paragraph 6 they had been active as officers of Defendant, NABCOR., INC. The Defendants positively stated and presented to the Plaintiff the material representations of facts as set forth in paragraph 6 during April and May, 1969.

8. The Plaintiff was unfamiliar with the business of automobile sales, financing, leasing, evaluation, and insuring and with the Defendant, NABCOR'S system and was ignorant of said systems operation, administration and profitability which the Defendants, FRANK MAIORANO and ANTHONY MAIORANO, represented on their own behalf and as President and Secretary of the Defendant, NABCOR, INC., as set forth in paragraph 6.

9. Acting entirely upon the faith of the said representations, the Plaintiff was induced to enter and did enter into the Master Distributor Franchise Agreement where it agreed to pay NABCOR, INC., the sum of Fifty Thousand Five Hundred ($50,500.00) Dollars, a copy of said agreement is attached hereto marked as Exhibit "B" and made a part hereof.

10. The Plaintiff, in accordance with paragraph 50 of NABCOR, INC., Master Distributor Franchise Agreement, (Exhibit "B") and upon the faith of defendant's representations, made the following payments to the Defendant NABCOR, INC.

a.	on May 23, 1969 together with its application	$ 1,000.00
b.	on June 2, 1969 at the time of execution of the aforesaid Master Distributor Franchise Agreement, Exhibit "B"	$24,500.00
c.	on three (3) occasions, upon the signing of the following area distributors:	
	(1) A. D. Wilson (3 territories)	$ 7,500.00
	(2) Peter Castalucci	$ 2,500.00
	(3) Nicholas J. Sipa, Jr.	$ 2,500.00
	Total	$38,000.00

11. The material representations made by the Defendants, FRANK MAIORANO and ANTHONY MAIORANO, on their own behalf and as President and Secretary of the Defendant NABCOR, INC., as more fully set forth in paragraph 6 above, were known by the Defendants at the time they were made to be false and fraudulent; and the Defendants did not honestly believe that the said representations were true at the time they made them in the following respects:

a. NABCOR, INC., did not have a direct account number with domestic manufacturers nor was it able to purchase automobiles directly from the said manufacturers.

b. NABCOR, INC., had one dealer outlet for each model of domestic automobile where pick ups were to be made by the Plaintiff. These dealers were not the nearest local dealer and in some cases were as far from Plaintiff's business as West Chester, New York and Wildwood, New Jersey.

c. NABCOR, INC., had only established its system of Master Distributors in approximately Five (5) eastern states and did not have a nationwide reputation or advertising network.

d. NABCOR, INC., did not have the following:

1. A thoroughly detailed and proven program;
2. A training or general indoctrination program of any substance;
3. Meaningful classes in any aspect of automobile sales and services;
4. Trained instructors.

e. NABCOR, INC., did not have any program for supplying buyers with insurance, financing, and/or leasing service.

f. NABCOR, INC., did not supply, maintain or update the price list manual in a timely manner.

g. NABCOR, INC., could not provide the "paper work" necessary to transfer title, secure license plates, and pay Pennsylvania sales tax in the purchase of new cars in such a manner as to enable Plaintiff and its distributors to deliver same at the time of delivery of new cars.

h. NABCOR, INC., did not and could not provide the manufacturer's new car warranty in the name of the purchaser of the vehicle in such a manner that would be recognized by the manufacturer for the owners use without additional charge.

i. NABCOR, INC., had no provisions for temporary license plates to be issued Plaintiff's customers.

j. NABCOR, INC., violated the terms of its purchase order by requiring Plaintiff to obtain from its customers a certified check in advance of delivery.

k. NABCOR, INC., provided minimal assistance in securing area distributors.

l. NABCOR, INC., was not able to provide and supply new automobiles to the Plaintiff at Ten ($10.00) Dollars above factory invoice plus transportation cost to be sold at Two Hundred ($200.00) Dollars over factory invoice, but to the contrary, due to the inaccuracy of the NABCOR pricing system, the cost set by the Defendant, NABCOR, INC., was significantly higher, making competition between the Plaintiff's automobile dealer and regularly franchised dealers impractical and ineffective.

m. NABCOR, INC., was not able to supply or provide particular new automobiles to Plaintiff's agents after the manufacturers announced the end of their production of the current models.

n. NABCOR, INC., never had a Master Distributor make a profit within a reasonable variation of the minimum profit figures set out in Exhibit "A" and Paragraph 6(m).

12. Plaintiff avers that after it had paid to the Defendants the sum of Thirty Eight Thousand ($38,000.00) Dollars as mentioned above and at various times after the commencement of the contract, Plaintiff discovered that Defendants' representations set forth in Paragraph 6 were false and fraudulent and that the Defendants well knew at the time they made said representations that same were false and fraudulent and that the Defendants did not honestly believe that the said representations were true at the time they made them.

13. As a result of the fraudulent misrepresentation made by Defendants, Frank Maiorano and Anthony Maiorano, on their own behalf and in behalf of the Defendant, Nabcor, Inc., the Plaintiff lost sales and goodwill, was unable to secure sufficient area distributors, incurred expenses such as, but not limited to, advertising, salaries, rent, telephone, and any expense and cost reasonably incurred by a like business in an amount in excess of Thirty-Thousand ($30,000.00) Dollars, and was unable, though obligated, to pay its President, John P. Poth, his reasonable salary of Twenty-Six Thousand ($26,000.00) Dollarsper annum for a period of Seventeen (17) months, or a salary of Thirty-Six Thousand and Five Hundred ($36,500.00) Dollars.

14. By reason of the malace and willfulness of Defendants, Frank Maiorano and Anthony Maiorano, on their own behalf and on behalf of Defendant, Nabcor, Inc., the Plaintiff claims punitive damages in excess of Ten Thousand Dollars ($10,000.00).

WHEREFORE, Plaintiff claims damages from the Defendants in excess of One Hundred Thousand ($100,000.00) Dollars.

SECOND COUNT - IN ASSUMPSIT

PENN DELAWARE MOTORS, INC. v. NABCOR, INC. ET AL.

15. Plaintiff, Penn Delaware Motors, Inc., incorporates by reference the allegations contained in paragraphs 1 to 4 inclusive, and paragraph 10 of First Count as fully as though the same were here set forth at length.

16. On the second day of June, 1969, the Plaintiff entered into a written contract with Defendant, NABCOR, INC., a true copy of which, marked Exhibit "B" is hereto attached and made part of this complaint.

17. On the thirteenth day of June, 1969, the Plaintiff entered into a written amendment to the contract of the second day of June, 1969, with Defendant, NABCOR, INC., a true copy of which, market Exhibit "C" is hereto attached and made a part of this complaint.

18. By the terms of said contract and amendment Plaintiff agreed to be a franchise master distributor for Defendant, NABCOR, INC., in the territory set forth in paragraph 1 of the amendment, market Exhibit "C" and attached hereto. Plaintiff agreed to purchase all new automobiles from

Defendant, NABCOR, INC., (Exhibit "B" - Paragraph 18) and to pay NABCOR a Ten ($10.00) Dollar per car override on each purchase (Exhibit "B" - Paragraph 17). Plaintiff agreed to provide cars to subdistributors for a Fifth ($50.00) Dollar above fleet price and transportation costs (Exhibit "B" - Paragraph 25). The Plaintiff agreed that the term of the franchise was one (1) year from June 2, 1969 and may be renewed from year to year at Plaintiff's option. Plaintiff agreed to pay the Defendant, NABCOR, INC., Fifty Thousand Five Hundred ($50,500.00) Dollars of which Twenth Five Hundred ($2,500.00) Dollars with the signing of each of the first ten (10) area distributors.

19. Defendant, NABCOR, INC., agreed in said contract (Exhibit "B") as amended (Exhibit "C") to do as follows:

a. To arrange for and provide all new cars for Plaintiff at establishment fleet prices plus transportation (Paragraph 3M);

b. To thoroughly train at its own expense Plaintiff and Plaintiff's agents in management, administration, solicitation, financing, leasing, insurance, etc. (Paragraph 3E);

c. To thoroughly train Plaintiff in used car evaluation and wholesale: (Paragraph 3C);

d. To supply sufficient quantities for Plaintiff and Plaintiff's agent of current and future wholesale price lists together with appropriate changes: (Paragraph 3G);

e. To supply leasing information and assistance (Paragraph 3I);

f. To provide assistance in programming and advertising (Paragraph 3K);

g. To provide consultation and give expert advice on matters pertaining to the business (P3L);

h. To arrange for and provide used cars (Paragraph 3A);

i. To assist in establishing area distributors within Plaintiff's territory (Paragraph 3N);

j. To handle purchase agreements for Plaintiff (Paragraph 9); and

k. To pay Plaintiff all fees due immediately upon completion of the purchase agreement (Paragraph 9).

All of which was to be performed by the Corporate Defendant for the sums as set forth in Paragraph 18, above.

20. The Plaintiff has fully performed all of the covenants and agreements contained in said contract as amended, upon its part to be kept and performed, and this in good faith and according to the true intent and meaning thereof. The Plaintiff paid to Defendant, NABCOR, INC., Thirty Eight Thousand ($38,000.00) Dollars as set forth in Paragraph 10 above.

21. The Defendant, NABCOR, INC., violated its duties, covenants and agreements contained in said contract, as amended, during various times after the commencement of said agreement as follows:

a. NABCOR, INC., did not provide the needed new automobiles to Plaintiff after the manufacturer's announced end of model production date.

b. NABCOR, INC., did not provide the needed new automobiles at the established fleet price plus transportation.

c. NABCOR, INC., did not thoroughly train the Plaintiff or its agents nor did Defendant have any substantial provisions for such training.

d. NABCOR, INC., did not train Plaintiff in the sale, purchase or evaluation of used cars.

e. NABCOR, INC., did not reasonably provide current and future wholesale price lists.

f. NABCOR, INC., did not provide in a timely manner, data setting forth the appropriate changes made by manufacturer of domestic make new cars.

g. NABCOR, INC., did not have a leasing program available for Plaintiff's use nor did it assist or inform Plaintiff about leasing.

h. NABCOR, INC., did not provide meaningful programming or advertising assistance.

i. NABCOR, INC., ignored and rebuked Plaintiff's pleas for its expert advise and consultation.

j. NABCOR, INC., did not provide used cars.

k. NABCOR, INC., did not reasonably assist and aid Plaintiff in securing sufficient area distributors.

l. NABCOR, INC., handled purchase agreement in an indifferent, inefficient, unbusinesslike and negligent manner.

m. NABCOR, INC., did not pay Plaintiff the fees due it, on the purchase agreement as required by the terms of Paragraph 9 of Exhibit "B".

n. NABCOR, INC., violated the terms of its purchase order, which it required Plaintiff to use, by demanding that a customer pay for the vehicle with a certified check in advance of delivery.

22. Plaintiff by letter informed Defendant, NABCOR, INC., of its violations of its duties, covenants and agreements on June 1, 1970, marked Exhibit "D" and made a part of this Complaint, and by numerous and various prior correspondences both verbal and written.

23. As a result of Corporate defendant's violations of the contract duties, covenants and agreements, the Plaintiff suffered loss of profit in

excess of Thirty Five Thousand ($35,000.00) Dollars, in its business which at the time of the execution of the contract, the Defendants, Frank Maiorano and Anthony Maiorano, on their own behalf and in behalf of Defendant, Nabcor, Inc., knew or had reason to know would result in Plaintiff suffering losses of that magnitude. The Plaintiff's loss of profit was in excess of Thirty Five Thousand ($35,000.00) Dollars.

24. Further, Plaintiff paid to Defendants as set forth in Paragraph 10 above, Thirty Eight Thousand ($38,000.00) Dollars in consideration for Defendants' covenants, agreements, and promises which Defendants violated and Defendants are liable to return to the Plaintiff plus interest.

25. As a further result, Plaintiff was not able to honor its contractual obligation to its President, John P. Poth, to pay his reasonable salary of Twenty-Six Thousand ($26,000.00) Dollars per annum for a period of Seventeen (17) months, or a salary of Thirty-Six Thousand and Five Hundred ($36,500.00) Dollars.

26. As a result Plaintiff lost the profit that the Defendants had promised in its Nabcor Master Distributor brochure attached hereto and marked Exhibit "A", to wit: Three Hundred Eighty Four Thousand ($384,000.00) Dollars.

27. As a result of the Defendants', Frank Maiorano and Anthony Maiorano, on their own behalf and in behalf of Defendant, Nabcor, Inc., malice and willfulness, the Plaintiff claims punitive damages in excess of One Hundred Thousand ($100,000.00) Dollars.

WHEREFORE, Plaintiff claims damages from the Defendants in excess of Five Hundred Thousand ($500,000.00) Dollars.

ASTOR & WEISS

BY: ____________________
HERBERT PRESSMAN

COMMONWEALTH OF PENNSYLVANIA :
SS
CITY & COUNTY OF PHILADELPHIA :

JOHN P. POTH, being duly sworn according to law, deposes and says that he is the President of PENN DELAWARE MOTORS, INC., the plaintiff in the foregoing Complaint; that he is authorized to take this affidavit on its behalf; and that the facts set forth in said Complaint are true and correct to the best of his information, knowledge and belief.

John P. Poth
JOHN P. POTH

SWORN TO AND SUBSCRIBED
Before me this 2nd day
of June, 1972

[illegible] Co.
My Commission Expires April 15, 1974

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires April 15, 1974

NABCOR
MASTER DISTRIBUTOR

THE
NABCOR SYSTEM

AN AUTO CONSUMER SERVICE

profit protection and
volume concept plan

MASTER AREA DISTRIBUTOR PROFIT PROJECTION

BASED ON 10 OPERATING AREA DISTRIBUTORS

MONTHLY PROFITS

MASTER AREA DISTRIBUTOR OVERRIDE

$20,000.00

50	NEW CAR PURCHASES PER MONTH PER AREA DISTRIBUTOR
X 10	OPERATING AREA DISTRIBUTORS
500	TOTAL NEW CAR PURCHASES MONTHLY
X $40.00	MASTER DISTRIBUTOR OVERRIDE PER UNIT ($50.00 MINUS $10.00 NABCOR OVERRIDE)
$20,000	MONTHLY NEW CAR PROFITS

FINANCE OVERRIDES

BASED ON ¼ of 1% PER YEAR of AVERAGE $2500 - 3 YEAR FINANCE CONTRACT

$5625.00

500	TOTAL NEW CAR PURCHASES MONTHLY
X 60%	AVERAGE NOVEMBER FINANCED
300	FINANCE CONTRACTS PER MONTH
X $18.75	PER CONTRACT
$5,625.00	FINANCE PROFIT PER MONTH

INSURANCE OVERRIDES

BASED ON 5% COMMISSION of AVERAGE $400 2 YEAR INSURANCE CONTRACT

$5000.00

500	TOTAL NEW CAR PURCHASES PER MONTH
X 50%	AVERAGE NUMBERED INSURED
250	INSURANCE CONTRACTS
X $20.00	PER CONTRACT
$5,000.00	INSURANCE PROFIT PER MONTH

ANALYSIS

$20,000.00	MASTER AREA DISTRIBUTOR OVERRIDE
$5625.00	FINANCE OVERRIDE
$5000.00	INSURANCE OVERRIDE
$30,625.00	*MONTHLY GROSS INCOME POTENTIAL*
– 1,729.00	MAXIMUM TOTAL MONTH EXPENSE
$28,896.00	NET PROFIT PER MONTH
X 12	MONTHS
– $346,752.00	MINIMUM YEARLY PROFIT POTENTIAL BASED ON 10 AREA DISTRIBUTORS
+ $37,500.00	10 AREA DISTRIBUTORS ESTABLISHED IN 1st YEAR @ $3750.00 PROFIT ON BROKER SUPPLIES
$384,252.00	1st YEAR MINIMUM PROFIT POTENTIAL BASED ON 10 AREA DISTRIBUTORS

NABCOR, INC.
101 Benson Manor
Township Line & Old York Road
Jenkintown, Pa.
215-885-2075

COPYRIGHT NABCOR INC.

NABCOR MASTER DISTRIBUTOR FRANCHISE AGREEMENT

This Agreement entered into and executed at Jenkintown, Pennsylvania, this 2nd day of June, 1969 by and between NABCOR, INCORPORATED hereinafter called NABCOR and PENN DELAWARE MOTORS, INC., a Pennsylvania corporation or its nominee, a MASTER DISTRIBUTOR/BROKER hereinafter referred to as the DISTRIBUTOR.

WITNESSETH:

WHEREAS, NABCOR is in the business of supplying new and used automobiles, and

WHEREAS, DISTRIBUTOR desires to engage in the business of conducting an "Automobile Consumer Service" for the purchase of new and used automobiles to the retail consumer, supplied by NABCOR, and to establish a network of AREA DISTRIBUTORS and brokers for the purpose of conducting an "Automobile Consumer Service" for the purchase of new and used automobiles for the retail consumer within certain territorial limits and on a franchise basis.

NOW THEREFORE, it is agreed as follows:

IN CONSIDERATION of the mutual promises and covenants contained in this agreement and in the franchise application and qualification form, which by reference is hereby made a part of this agreement, is attached hereto and marked as Exhibit "1", NABCOR does hereby grant to DISTRIBUTOR the right to conduct an "Automobile Consumer Service" whereby DISTRIBUTOR will arrange purchase agreements for the retail and for the AREA DISTRIBUTOR and brokers he will establish within the territory described below:

1. TERRITORY: NABCOR hereby grants the DISTRIBUTOR the exclusive rights for the following territory: Delaware County(Pennsylvania), Chester County,(Pennsylvania), the entire state of Delaware and a portion of Montgomery County (Penna.) to be agreed to be the partie DISTRIBUTOR is granted an irrevocable one (1) year option for the exclusive rights for Lancaster County (Pennsylvania), and York County (Pennsylvania), said option to be exercised without payment of any additional fee or charges therefor.

2. Said franchise shall exist for a term of one (1) year from the date hereof and thereafter may be renewed by DISTRIBUTOR on a year to year basis at his option provided however, the DISTRIBUTOR shall maintain at all times a facility which includes a reasonably appointed office and that DISTRIBUTOR shall conduct his business in accordance with generally accepted sound business practices.

3. NABCOR agrees to and will, during the term of this franchise, provide to the DISTRIBUTOR the following services, information, forms;and products. All additional forms shall be supplied at NABCOR'S lowest price to other distributors but not to exceed NABCOR'S cost plus reasonable profit not in excess of 25%. Said services and information shall be supplied without additional charge by NABCOR TO DISTRIBUTOR.

A. NABCOR will arrange for and provide new cars and used cars for DISTRIBUTOR.

B. NABCOR will thoroughly train DISTRIBUTOR in management, administration, solicitation, financing leasing, insurance, and etc.

C. NABCOR will thoroughly train DISTRIBUTOR in used car wholesale.

D. NABCOR will supply all forms necessary for DISTRIBUTOR'S AREA DISTRIBUTORS and brokers.

E. NABCOR will assist in and supply basic bookkeeping procedures and forms.

F. NABCOR will supply purchase agreement forms.

G. NABCOR will supply sufficient quantities for DISTRIBUTOR, DISTRIBUTOR'S AREA DISTRIBUTORS and brokers of the current and future wholesale price lists together with appropriate changes thereon on all domestic make new cars.

H. NABCOR will furnish lighted signs for ten (10) DISTRIBUTOR'S AREA DISTRIBUTORS and one hundred (100) brokers. All additional signs will be supplied by NABCOR at the prices provided for in schedule BB attached hereto and made a part hereof.

BEST COPY AVAILABLE

I. NABCOR will supply leasing information and assistance.

J. NABCOR will supply registration information and forms where applicable.

K. NABCOR will provide assistance in programming and advertising.

L. NABCOR will provide consultation for DISTRIBUTOR and give expert advice on matters pertaining to the business.

M. NABCOR will arrange for and provide new cars for DISTRIBUTOR at established fleet prices plus transportation.

N. NABCOR agrees to assist DISTRIBUTOR in establishing AREA DISTRIBUTORS and brokers within his territory and provide contracts necessary to do so.

4. NABCOR agrees to allow DISTRIBUTOR to establish, in its area AREA DISTRIBUTORS and brokers who will identify themselves as NABCOR brokers and DISTRIBUTOR will retain all deposits and fees except as outlined in paragraphs 16 and 17.

5. NABCOR agrees to provide at its expense a complete training program for the DISTRIBUTOR or its designee, and/or DISTRIBUTOR'S AREA DISTRIBUTORS and initial as well as occasional meetings for its brokers. This program will include a general indoctrination of all phases of the NABCOR "Automobile Consumer Service". This training program will be either verbal or taped at NABCOR's discretion and will take place at one of the NABCOR offices or in the DISTRIBUTOR'S territory at NABCOR'S discretion; thereafter, training seminars will be held at time and place to be determined by NABCOR and may be attended by the DISTRIBUTOR or by his designee, should he feel additional training is necessary.

6. The DISTRIBUTOR'S interest in this agreement is personal and may be sold, assigned, or transferred only upon the written permission of NABCOR. Such permission shall not be unreasonably withheld as long as the DISTRIBUTOR is fulfilling the terms and conditions of this agreement and the same is in full force and effect. This agreement shall innure to the benefit of the estate or heirs of the DISTRIBUTOR.

7. NABCOR agrees to allow DISTRIBUTOR to establish, in his assigned territory and in such open areas as may be allowed and approved by NABCOR, AREA DISTRIBUTORS and brokers who will identify themselves as NABCOR brokers. Such AREA DISTRIBUTORS and brokers to be established shall be written on NABCOR forms and subject to NABCOR'S approval, terms and conditions. DISTRIBUTOR will retain all license fees except as outlined in paragraph 16 and 17.

8. NABCOR agrees to assign to DISTRIBUTOR all area distributors and brokers already established in DISTRIBUTOR'S territory upon execution of this agreement. NABCOR will retain all fees paid in exchange for this asset. There are no current area distributors or brokers in the territory here in question.

9. NABCOR agrees to handle purchase agreements for DISTRIBUTOR or his area distributors and brokers if necessary. All fees due DISTRIBUTOR will be paid to DISTRIBUTOR by NABCOR immediately upon completion of the purchase agreement.

10. NABCOR agrees to pay all freight or postage on regular shipments of signs and materials.

11. NABCOR reserves the right to chang the terms and conditions of the purchase agreement and all other forms from time to time as deemed necessary, so long as such changes will not materially adversely affect MASTER DISTRIBUTOR.

12. FRANCHISE FEE: In consideration of the above benefits to the DISTRIBUTOR and the obligations to be performed by NABCOR, in order to help partially to defray the cost of establishing the franchise, which includes training expenses as well as signs, manuals, presentation kits, and all other material necessary to operate the franchise, and in consideration of NABCOR'S execution of this agreement, DISTRIBUTOR agrees to and does hereby pay to NABCOR, as the consideration, therefore, the sum of Fifty Thousand Five Hundred ($50,500) Dollars, as per paragraph 50.

13. NABCOR reserves the right to assign its rights and interest under this agreement, and the DISTRIBUTOR and the heirs and assigns of the DISTRIBUTOR agree to be bound by the terms of this agreement if and when assigned, providing said assignee shall have sufficient experience and be financially capable of undertaking and fulfilling all the obligations assumed by NABCOR pursuant to the terms and conditions of this agreement.

14. DISTRIBUTOR will conduct his business under his own name or a fictitious or corporate name chosen by him which shall not include the word NABCOR, INC., provided however, DISTRIBUTOR may submit for approval a fictitious or corporate name which includes the word NABCOR provided such fictitious name sufficiently identifies DISTRIBUTOR'S business as a separate and distinct entity from NABCOR, INC. DISTRIBUTOR shall set forth on all business stationery, cards, signs, and all other manner of public utterance that he is an authorized DISTRIBUTOR of NABCOR. NABCOR does hereby authorize DISTRIBUTOR to use the name NABCOR of Southeastern Pennsylvania or NABCOR of Southeastern Pennsylvania, Inc., as a fictitious or corporate name as it deems to be to its best interest.

15. DISTRIBUTOR agrees and understands that any change of principals, officers, partners, or name of DISTRIBUTOR shall require written approval of NABCOR.

16. DISTRIBUTOR agrees for each of DISTRIBUTOR'S AREA DISTRIBUTORS who renew to pay fifty percent (50%) of said DISTRIBUTOR'S AREA DISTRIBUTORS annual renewal fee for use of its name and systems. On any area distributor it establishes in its area, In excess of ten (10) DISTRIBUTOR'S AREA DISTRIBUTORS it shall pay to NADCOR the sum of Five Thousand ($5,000) Dollars for the cost of initial promotional packages, signs and training material, subject to cost increases at NADCOR'S option.

17. DISTRIBUTOR agrees to pay NADCOR a ten dollar ($10.00) per car override on each purchase by DISTRIBUTOR or his area distributors or brokers in his area.

18. DISTRIBUTOR agrees he will order new cars for all purchase agreements, used cars (except trade-ins) and other NADCOR systems material from NADCOR.

19. Any new automobiles ordered by DISTRIBUTOR must be accompanied by part payment of not less than five percent (5%) and will be considered binding. Failure to complete said purchase in accordance with the terms of the purchase agreement will result in forfeiture of part payment as liquidated damages.

A. The DISTRIBUTOR agrees to mail, and/or to require that his sub-agents mail, to NADCOR, all completed purchase agreements listed on a duly executed Sales Report, along with the full remittance, within seventy-two (72) hours from the date of execution of said agreement.

20. DISTRIBUTOR agrees that his minimum quota will be two hundred fifty (250) orders per one hundred eighty (180) day period.

A. DISTRIBUTOR agrees if he does not meet his minimum quota for any ninety (90) day period, he is subject to cancellation and all monies paid shall be retained by NADCOR as damages.

B. Said minimum quota shall not become effective until six (6) months after the execution of this agreement.

21. DISTRIBUTOR agrees that within a reasonable period of time, he will set up his operation and all other matters necessary to his business so that he may handle said purchase agreements himself.

22. DISTRIBUTOR agrees to pay freight on shipments of materials (other than initial shipments) made at his request or on any supplies or materials returned as undeliverable.

23. NADCOR agrees to train and DISTRIBUTOR agrees to supervise and handle supply and delivery of all purchases of its AREA DISTRIBUTOR'S and brokers.

24. DISTRIBUTOR agrees to accept conditions on area distributor contracts and brokers contracts and their terms.

25. DISTRIBUTOR agrees and understands that he will arrange for and provide new cars at established Fleet prices, plus Transportation, plus DISTRIBUTOR fee of fifty dollars ($50.00). This fee is subject to increase if justified by increased costs.

26. DISTRIBUTOR agrees he will engage in no other business of any kind without first obtaining the written authorization of NABCOR, except those presently engaged in.

27. DISTRIBUTOR agrees that he will make no warranties other than those on the purchase agreement or franchise agreement.

28. DISTRIBUTOR agrees he will not solicit in any territory other than that franchised to him by the terms of this agreement, and a repeated violation hereof, at NABCOR'S election, NABCOR may cancel and terminate this franchise.

29. DISTRIBUTOR agrees that he will make available for reasonable inspection, upon request, its sales records and further agrees to submit financial statements not more frequently than quarter anually, pertaining to the business encompassed by this agreement. In the event NABCOR receives a bona fide complaint pursuant to paragraph 28 of this agreement, then DISTRIBUTOR agrees to make available all records of expenditures for such period.

30. DISTRIBUTOR agrees and understands that all area distributors and brokers already established in his territory, upon execution of this agreement, will be assigned to him by NABCOR and he will accept same and honor all terms and conditions of those agreements. There are none in existence at the time of signing of this agreement.

31. DISTRIBUTOR agrees that he will not advertise the services of NABCOR, either directly or indirectly, through use of a fictitious trade style or otherwise and in any manner whatsoever unless such advertisement is approved in writing by NABCOR.

32. Upon termination of this agreement DISTRIBUTOR agrees to remove and refrain from using thereafter, the words "NABCOR", or NABCOR, INCORPORATED or any name that has been used in connection with the sale of this service, including the use of any facsimile thereof, on cards, letterheads, advertisements, or in any other manner whatsoever.

33. DISTRIBUTOR understands and agrees that he is an independent contractor and that he is not an agent for nor acting on behalf of NABCOR for any purpose or in any manner whatsoever in the operation of his business during or after the expiration of this agreement. DISTRIBUTOR agrees to indemnify and save harmless NABCOR from and against all claims, demands, damages, actions and causes of actions, liability, expenses or costs arising out of any transaction

omission to act by DISTRIBUTOR. If suit is brought against DISTRIBUTOR and/or NABCOR on account of any such transaction or act of omission, DISTRIBUTOR shall, upon receipt of notice thereof, assume the defense and bear all expenses, cost, attorney's fees, and liability or damages which may be incurred. DISTRIBUTOR also agrees to promptly pay when due on demand all debts and obligations incurred by him in the course of his business during the term of this agreement. DISTRIBUTOR'S failure to perform any of the terms of this agreement shall constitute his breach of this agreement, which, at the sole option of NABCOR shall entitle NABCOR to cancel this Agreement and to retain all payments theretofore, made by DISTRIBUTOR to NABCOR under the terms of this agreement.

34. In the event NABCOR or DISTRIBUTOR is prevented from performing any of its obligations hereunder, by reason of Acts of God, strikes, labor difficulties, riot, insurrection, or the act of any government body or by any other reason beyond its control, the delay occasioned thereby in supplying new or used automobiles or the failure to supply new or used automobiles, shall not be considered a breach of this contract.

35. The paragraphs of this Agreement are severable, and in the event any paragraph, sentence or word, or portion of this Agreement is declared illegal or unenforceable, the remainder of this Agreement shall be effective and binding upon the parties. No waiver of any breach of any of the covenants, agreements, or provisions herein contained shall be construed as a waiver of any subsequent breach of the same or any other covenant or provision. This instrument constitutes the entire agreement between the parties and there are no other covenants, promises, or agreements, (written or oral and no agent of either party has authority to make representations or other agreements (verbal or written) which modify or vary the terms or conditions of this Agreement.

36. BREACH OF CONTRACT: Breach of any of the terms and conditions of this agreement or any fraudulent acts of misconduct by NABCOR and/or DISTRIBUTOR shall at the option of the other party be cause for termination of this agreement and all benefits hereof.

37. VENUE: In the event that suit is brought by either party under the provisions of this or any other agreement, between the parties hereto, venue shall be in the State of Pennsylvania and in the county which is the current principal legal residence of NABCOR. It is further agreed that for the purpose of interpretation the laws of the State of Pennsylvania shall govern and the terms and conditions of this Agreement shall have precedence over any other conflicting terms and conditions. Failure to enforce any of the provisions of this Agreement shall not be considered a waiver of that provision.

for reasonable cause by NABCOR to DISTRIBUTOR, with explanation of said cause.

39. RESTRICTIVE COVENANT: The DISTRIBUTOR further agrees that while this agreement is in force or after termination of this agreement he will not divulge to any person or persons except in the normal course of carrying out the business of NABCOR, any of the latter's business or sales methods, forms, contracts, correspondence, letters, and all documents or copies thereof, pertaining to or relative to the business of NABCOR including lists of customers or former customers and will not solicit same nor use any of the above in any manner whatsoever, without the written permission of NABCOR. The DISTRIBUTOR agrees to make available to NABCOR at the termination of this agreement all such material. The DISTRIBUTOR also agrees that he will not employ or seek to employ or hire in any capacity any person who at the same time is employed by or representing NABCOR in any capacity and will not directly or indirectly induce any such persons to leave their employment unless the DISTRIBUTOR has obtained the prior written approval of NABCOR.

40. The DISTRIBUTOR further agrees that while this agreement is in full force and for a period of one (1) year after termination of this agreement not to compete in any manner whatsoever with NABCOR in any similar business either as an individual, partner, (active, inactive or silent) corporation stockholder, or company, or in any city or county in which NABCOR is engaged in business or is transacting business.

41. INJUNCTIVE RELIEF: NABCOR shall be entitled to injunctive relief and damages should DISTRIBUTOR breach any of the terms and conditions of the restrictive covenants contained in this agreement and that any monies owing the DISTRIBUTOR by NABCOR under the terms of this or any subsequent agreement may be applied as liquidated damages. This provision or the restrictive covenants contained in thi agreement may not be waived or modified by any subsequent agreements unless such waiver is specifically mentioned.

42. FILING OF CLAIMS: Any claim whatsoever against NABCOR or other representatives of NABCOR resulting from or arising out of this agreement or subsequent agreements that are not set forth in writing by registered mail within thirty (30) days after date of such claim, or within thirty (30) days after termination of this agreement, whichever applies, shall be considered waived. The restrictive covenants contained in paragraph 40 of this agreement shall be construed as independent of any other provisions hereof, and the existence of any claim in course of action of the DISTRIBUTOR against NABCOR whether predicated on this agreement or otherwise, shall not constitute a defense to the enforcement by NABCOR of said restrictive covenants. The prospective DISTRIBUTOR in consideration of the negotiation between himself and NABCOR that resulted in him signing this agreement agrees to bind himself to paragraph 40 of this agree-

ment whether or not this agreement has been accepted, signed countersigned, or rejected by NABCOR.

43. ALL notices intended for either of the parties hereto by the other shall be in writing and sent by registered or certified mail, return receipt requested, postage prepaid. Notices to NABCOR shall be addressed to NABCOR, INC., 101 Benson Manor, Township Line and Old York Road, Jenkintown, Pennsylvania. Notices to DISTRIBUTOR shall be addressed to John Poth or his nominee, 8300 St. Martins Lane, Philadelphia, Pennsylvania.

44. Notwithstanding anything herein to the contrary, it is understood and agreed that neither party hereto shall be deemed in default hereunder unless written notice shall have first been given to such party by the other party, which notice shall specify the nature and extend of such party's failure to comply with the provisions hereof and such party within a period of thirty (30) days thereafter shall have failed to pay the sum or sums due if the default consisted of failure to pay money, or if the failure consists of something other than the payment of money, such party shall have failed within the said thirty (30) day period to begin and actively and diligently and in good faith to proceed with the correction of this default until it is fully corrected.

45. Notwithstanding anything stated hereinbefore the DISTRIBUTOR shall be permitted to assign his rights, duties and obligations hereunder to a corporation to be formed by him for the operation of the business of this franchise agreement.

46. WHEREVER, NABCOR'S permission is required to do any act or wherever NABCOR has been granted the sole right to make any determinations relative to the operation of the business of which this agreement is a part thereof, or where NABCOR has the right to change any prices or charges made to DISTRIBUTOR or where NABCOR has any unilateral right to proceed in any matter relative to the terms and conditions and operation of this business, it is understood and agreed, that NABCOR will not unreasonably withhold its permission or act in any unreasonable manner in the exercise of any discretion granted to it pursuant to the terms of this agreement.

47. DISTRIBUTOR is not to be deemed to be in default of any of the terms and conditions of this agreement if NABCOR is in default under the terms and conditions of this agreement.

48. NABCOR agrees that it shall have inserted a provision similar to paragraph 23 in each MASTER DISTRIBUTOR and AREA DISTRIBUTOR agreement within its system, and agrees to enforce same to the full extent of the law.

49. NABCOR agrees to indemnify and save DISTRIBUTOR harmless from and against all claims demands, damages, actions and causes of actions, liability, expenses or costs arising out of any transaction participated in (except as provided for in paragraph 34) or act committed or omission to act by NABCOR. If suit is brought against NABCOR and/ or DISTRIBUTOR and/or AREA DISTRIBUTOR on account of any such transaction or act of omission, NABCOR shall, upon receipt of notice thereof, assume the defense and bear all expenses, costs, attorney's fees and liability for damage which may be incurred. NABCOR also agrees to promptly pay when due on demand all debts and obligations incurred by him in the course of his business during the term of this agreement. NABCOR'S failure to perform any of the terms of this agreement shall constitute a breach of this agreement, which at the sole option of DISTRIBUTOR shall entitle DISTRIBUTOR to cancel this agreement and to hold NABCOR responsible for any damages and losses sustained pursuant to the terms of this agreement.

50. DISTRIBUTOR shall pay the sum of money due pursuant to paragraph 12 in the following manner:

A.	Paid on May 23, 1969 with application	$ 1,000.00
B.	To be paid at the time of the execution of this agreement	24,500.00
C.	To be paid proportionately with the signing of each of the first 10 area distributors [illegible]	25,000.00
	Total	$50,500.00

51. NABCOR agrees to permit DISTRIBUTOR to make reasonable changes in NABCOR'S MASTER DISTRIBUTOR FRANCHISE AGREEMENT for AREA DISTRIBUTORS and/or BROKERS providing said changes are approved by NABCOR.

The parties hereto certify that they have read all portions of this agreement. This agreement constitutes the final and complete understanding between the parties hereto and that no other representations or promises, verbal or otherwise, have been made, and that this agreement will not become effective until accepted and approved by the home office in Pennsylvania.

PENN·DELAWARE MOTORS, INC.
(Distributor)

Attest:

____
Secretary

By____________________
President

22nd Fl. Architects Bldg.
(Business Address)

Philadelphia, Pennsylvania
(City and State)

ACCEPTED:
NABCOR, INCORPORATED

By: Pres

Attest:

Secty

ADDENDUM TO AGREEMENT DATED 2nd day OF JUNE, 1969 by and between NABCOR, INCORPORATED and PENN DELAWARE MOTORS, INC.

WHEREAS the parties have entered into an agreement dated even date herewith and desire to make the following additions and corrections thereto.

NOW THEREFORE the parties intending to be legally bound hereby do hereby agree as follows:

52. Wherever in the above noted agreement the pronoun his or him appears it is understood that [illegible] shall read it. Furthermore in paragraph 6 of said agreement or such other place referring to estate or heirs of DISTRIBUTOR it shall mean DISTRIBUTOR'S successors, administrators and/or assigns.

53. Paragraph 20 shall be deleted in its entirety and the following paragraph 20 shall be inserted therein:

> 20. DISTRIBUTOR agrees that his minimum quota will be two hundred fifty (250) orders per one hundred eighty (180) day period.
>
> A. DISTRIBUTOR agrees if it does not meet its minimum quota for any one hundred eighty (180) day period it is subject to cancellation and all monies paid shall be retained by NABCOR as damages.
>
> B. Said minimum quota shall not become effective until six (6) months after the execution of this agreement.

54. Paragraph 15 shall be deleted in its entirety and the following inserted in its place:

> 15. DISTRIBUTOR agrees and understands that any change of the principal shareholders or name of DISTRIBUTOR shall require written approval of NABCOR.

55. The territory referred to in paragraph 1 of said agreement

ADDENDUM TO AGREEMENT DATED 2nd day OF JUNE, 1969 by and between NABCOR, INCORPORATED and PENN DELAWARE MOTORS, INC.

WHEREAS the parties have entered into an agreement dated even date herewith and desire to make the following additions and corrections thereto.

NOW THEREFORE the parties intending to be legally bound hereby do hereby agree as follows:

52. Wherever in the above noted agreement the pronoun his or him appears it is understood that its shall read it. Furthermore in paragraph 6 of said agreement or such other place referring to estate or heirs of DISTRIBUTOR it shall mean DISTRIBUTOR'S successors, administrators and/or assigns.

53. Paragraph 20 shall be deleted in its entirety and the following paragraph 20 shall be inserted therein:

> 20. DISTRIBUTOR agrees that his minimum quota will be two hundred fifty (250) orders per one hundred eighty (180) day period.
>
> A. DISTRIBUTOR agrees if it does not meet its minimum quota for any one hundred eighty (180) day period it is subject to cancellation and all monies paid shall be retained by NABCOR as damages.
>
> B. Said minimum quota shall not become effective until six (6) months after the execution of this agreement.

54. Paragraph 15 shall be deleted in its entirety and the following inserted in its place:

> 15. DISTRIBUTOR agrees and understands that any change of the principal shareholders or name of DISTRIBUTOR shall require written approval of NABCOR.

55. The territory referred to in paragraph 1 of said agreement

shall include that portion of Montgomery County bounded by the following areas: That portion of Montgomery County South of Route 30 to route 33, then South of Route 30 to the County line.

NABCOR, INCORPORATED

Attest

Secretary

By Pres.

PENN DELAWARE MOTORS, INC.

Attest:

Secretary

By

President

Schedule A A

Administrative Materials For Master Distributor

FORM NUMBER	NAME
SAPA-1001	"Purchase Agreement" Forms
BAPO-2002	"1850 Transfer" Forms
SAPO-3003	Purchase Order Forms
NCSP-7007	"Credit Applications" Forms
NCRF-8008 (Rev)	"Daily Operating Control Record" Forms
NCVF-9009 ([illegible])	"Sales Commission Record" Forms
NSRF-1010 (Rev)	"Monthly Sales Record" Forms
N2	A.D. "Profit Projection" Brochures
N3	Broker "Profit Projection" Brochures
N5	A.D. "Maximum Expense Structure" Brochures
A-125	"Used Car Appraisal" Form (Bi-Weekly)
NMF-1212	"Nabcor Mailer" Brochures
POA-1313	"Power of Attorney" Forms
NDCR-1414 (Rev)	"Distributor Contact Report" Forms
NCGA-1717	"Confidential Get Acquainted" Forms
NNDC-1818	"Non-Disclosure Agreement" Forms
COC-2121 (Rev)	"Car Order Control" Forms
DEAPR-2222 (Rev)	"Daily Expense and Profit Record" Forms
NFA-2323	"Franchise Application" Contracts
M-NADFA-7-687	"Area Distributor" Franchise Contracts
NSB-2929	"Supreme Court Decision" Brochures
NRC-3131	"Times Payment Schedule" Forms
NRC-3333	"Credit Life Schedule" Forms
NMDICA-3636 (Rev)	"Independent Contractor's Agreement" Forms
	Complete Auto Price Index
	Lighted Nabcor Clock-Sign
SCH "B" Of A.D. Franchise Contract.	Complete Training Course For Brokers
	Marketing and Administrative Training Manuel
	Presentation Manuel
	"Part Payment Acknowledgement" Forms
	"Brief-Nabcor Summary" Brochures

Schedule to-
NMDFA-7-686

J.P.P.

In consideration of the monies to be paid pursuant to paragraph 50 of the NABCOR MASTER DISTRIBUTOR FRANCHISE AGREEMENT, NABCOR does hereby agree to supply the following items:

A.	10 complete Area Distributor packages each at $6,250.00	$ 62,500.00
	Quantity discount of	12,500.00
	Net	50,000.00
	1 Master Distributor Adm. package	500.00
	Total	$ 50,500.00

B. Pursuant to paragraph 3H of NABCOR MASTER DISTRIBUTOR FRANCHISE AGREEMENT all packages in addition to the above noted items shall be sold and delivered to DISTRIBUTOR upon the following terms:

Administrative Package	at	$375.00 ea.
Broker Sales Package	at	$225.00 ea.
Broker Training Courses	at	$175.00 ea.
Lighted Electric Clock signs	at	$125.00 ea.

C. DISTRIBUTOR shall place an order for the items set forth in sub-paragraph A above on a form acceptable to NABCOR for and in consideration of the payments to be made pursuant to paragraph 50. It is understood that the balance due of $25,000.00 shall be paid at the rate of $2,500.00 for each of the first 10 AREA DISTRIBUTOR PACKAGES delivered to DISTRIBUTOR.

J.P.P.

EXHIBIT "1"

N

NABCOR, INC.

101 [illegible] Manor
Township Line & Old York Road
Jenkintown, Pa.

Master Distributor

FRANCHISE APPLICATION

May 23, 1969

Gentlemen:

I hereby make formal application for a territory franchise from Nabcor, Inc., hereinafter referred to as the Company, in order to secure the rights which will entitle me to purchase from Company new and used automobiles obtained by Company and to arrange for the purchase or lease of new automobiles.

TERRITORY

Penna - Delaware County, Chester County and State of Delaware
A one (1) year option for Lancaster and York County, Penna.
without additional charge

Name of Applicant John Paul [illegible]

Address 8300 St. Martins Lane, Phila., Penna

Phone No. CH 7-1195 Own Home (✓) Yes ( ) No. Age 57

Business background:

Net Worth $ 200,000.00 Annual Income $ 50,000.00

References: (1)

(2)

(3)

Bank Reference:

Remarks: Subject to signing of an agreement as verbally approved at a meeting between the parties. Agreement to be prepared by attorney for buyer (Master distributor) agreement as amended. Payment of $5,000.00 to be made upon signing of Master distributor Agreement by the parties and acceptance of this application, whichever is later.

In the event this Application is accepted by the Company, I agree to pay a Franchise License Fee of $5,000 00/xx Said fee is payable as follows:

$1,000 00/xx enclosed herewith, receipt of which is hereby acknowledged, with the balance of $4,000.00 due and payable upon acceptance by the Company of this Application. I agree that, in the event this Application is accepted, I shall be bound to make the payments as set forth herein as well as to execute the Territory Franchise Agreement, which is by reference, made a part of this application. All terms, conditions, provisions, and addenda of the Territory Franchise Agreement are acceptable. I further recognize that upon receipt of this Application, the Company, at its expense, must make an extensive investigation of the Applicant and at its expense order necessary promotional supplies, therefore, should I fail to pay the balance due hereunder after acceptance of this Application, the down payment enclosed herewith shall be retained by the Company as total liquidated damages. IN THE EVENT THIS APPLICATION IS REJECTED, THE DOWN PAYMENT ENCLOSED HEREWITH SHALL BE REFUNDED.

or Note payable in sum of $25,000.00 to be paid proportionately with the securing of said area distributors. Said note to be non-interest bearing (SEAL)

Applicant

NABCOR, INC. (SEAL)

Applicant

APPROVED:

BEST COPY AVAILABLE

Exhibit "B"

FIRST AMENDMENT TO NABCOR MASTER DISTRIBUTOR FRANCHISE AGREEMENT

This Agreement entered into and executed at Jenkintown, Pennsylvania, this 15th day of June, 1969 by and between NABCOR, INCORPORATED hereinafter called NABCOR and PENN DELAWARE MOTORS, INC, a Pennsylvania corporation or its nominee, a MASTER DISTRIBUTOR/BROKER hereinafter referred to as the DISTRIBUTOR.

WITNESSETH:

WHEREAS, NABCOR and DISTRIBUTOR have entered into an agreement and addendum dated the 2nd day of June, 1969 wherein they have set forth the various rights, obligations and duties each has assumed to the other, and

WHEREAS, the parties mutually desire to correct and amend the territory listed therein.

NOW THEREFORE, in consideration of the mutual covenants contained in the aforesaid agreement together with other good and valuable consideration, with the intention to be legally bound thereby, the parties hereunto agree as follows:

1. Paragraph 55 of addendum dated June 2, 1969 by and between NABCOR and PENN DELAWARE MOTORS, INC. is hereby deleted in its entirety and the following paragraph is inserted in its stead:

> 55. The territory referred to in paragraph 1 of the NABCOR MASTER DISTRIBUTOR FRANCHISE AGREEMENT dated June 2, 1969 shall include that portion of the territory of Montgomery County, Pennsylvania

south of route 30 to the Montgomery County line. The territory shall also include the entire town or borough of Flourtown of the Township of Whitemarsh, County of Montgomery, Commonwealth of Pennsylvania.

NABCOR, INCORPORATED

Attest:

Secretary

By
President

PENN DELAWARE MOTORS, INC.

Attest:

Secretary

By
President

Exhibit "C"

June 1, 1970

Mr. Frank Maiorana
Nabcor, Inc.
101 Benson Manor
Jenkintown, Pa. 19046

Dear Frank,

Reference is made to the franchise agreement entered into and executed at Jenkintown, Pa. the 2nd day of June, 1969 by and between NABCOR, INCORPORATED hereinafter called NABCOR AND PENN DELAWARE MOTORS, INC., a Pennsylvania corporation or its nominee, a MASTER DISTRIBUTOR/BROKER hereinafter referred to as the DISTRIBUTOR.

In accordance with the terms outlined in paragraph 2 of said franchise the distributor is exercising his option to renew the agreement for another one year term.

In accordance with paragraph 1 of said franchise agreement, the distributor is exercising his option for the exclusive territorial rights for Lancaster County, Pa. and York County, Pa.

As expressed to you a number of times I am sustaining a considerable loss in this franchise which is at gross variance from the profit projection of $34,000 shown in your franchise advertising literature given to me in the precontractual phase of the franchise negotation. My area distributors have suffered proportionate losses.

I (as well as my area distributors and their brokers) have been very unhappy with the manner in which this franchise has worked out, much of which has been caused by Nabcor's inability to honor the commitments outlined in the agreement and in later discussions. Some of the complaints are listed below in accordance with paragraph 44. I request you take the necessary action to comply with the provisions of your agreement.

Paragraph 3A. states "NABCOR will arrange for and provide new cars and used cars for DISTRIBUTOR." Similarly,

Exhibit "D"

paragraph [illegible] states "NABCOR will arrange for and provide new cars for DISTRIBUTOR at established fleet prices plus transportation."

Initially Nabcor stated to me and my area distributors that since the Supreme Court ruling in 1966 it opened the way for Nabcor to order cars from the factory under a "leasing plan" and a "guaranted value plan", and that you had account numbers with the four major manufacturers which enabled you to do so.

Nabcor, for the most part, has only one source of supply (for each make) to draw from in this area. In some cases they are distant sources such as Wildwood, N. J. for Cadillacs, North Jersey and/or Westchester County, N. Y. for Oldsmobiles, and Doylestown, Pa. for Pontiacs. During early discussions Nabcor stated to me and my area distributors that these cars would be drop shipped to local dealers. For the most part the distributor, area distributors, and their brokers have had to pick up these cars themselves at whatever source you have designated.

Since mid-May most dealers have stopped taking orders for new cars which means that dealers must sell from their own stock or that of other dealers. Since, in most cases, NABCOR has but one source of supply for each make this means a virtual cut-off of supply of cars to me and my area distributors. A request for help has produced the answer, "Locate them yourself." How can we sell cars during this "best selling period" when you cannot provide them?

Cars ordered in the past have taken much longer than the 4-6 weeks promised resulting in many unhappy customers.

The Purchase Agreement makes no provision for price changes, nor does it make provision for trade-in allowance charges depending upon the wholesale value at actual trade in time. These items should be standard provisions on our contract.

Feedback of information on changes in equipment or prices has taken up to two months, again resulting in customer disatisfaction.

The requirement for certified checks prior to delivery is contrary to the provisions of your standard Purchase Agreement and has resulted in much customer resistance especially since he is not usually able to see the car beforehand.

The NABCOR training program is virtually non existent - certainly not at all up to the expectations of the literature or the contract. It was my concept you did not want people connected with the automobile industry. Your training program was to be an integrated program which would completely train me and my people to operate under this program. It actually consisted of reading the original inadequate training manuals and informal discussions on the automobile business.

There have been many other detailed problems which have been related to you orally and in reports from my area distributors. Many of these complaints have merit and remedial action should be taken. For the most part you have ignored them. These complaints relate mostly to detailed support and timely action by somebody from the home office staff. You have had an insufficient number of trained personnel to handle your detail work.

It is requested once again that we have a meeting to discuss these deficiencies in an atmosphere of recognition of problems and an attitude of helpfulness. Corrective action must be taken and assistance must be given to make this franchise a success.

Sincerely yours,

John P. Poth
President

JPP/bb

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY

P

L. ROBERT TANNENBAUM :

vs. :

NABCOR, INC., A Corporation : NO. 67-15844

ANSWER TO COMPLAINT IN EQUITY

1. Admitted.

2. Admitted.

3. Admitted.

4. Defendant neither admits nor denies the allegations in paragraph four of the Complaint since there was no "copy" of the written agreement attached to the Complaint served on defendant. It is admitted that there was a written agreement which was an integration of the negotiations and discussions preliminary to the signing of said agreement.

5. Admitted.

6. Denied. Defendant is without sufficient information to form a belief as to the truth of the averments in this paragraph of the Complaint and all means of proof are within the control of plaintiff. The averments are therefore denied and proof demanded.

7. Denied. On the contrary it is averred that:

a. Defendant did in fact deliver two new automobiles to plaintiff and had available two additional new automobiles for delivery which orders plaintiff cancelled.

b. The written agreement speaks for itself which does not set forth that defendant would furnish new automobiles at $75.00 over dealer cost. It is further averred that plaintiff was told that new automobiles would be furnished to plaintiff at markups ranging from $50.00 to $500.00, depending on make and model, over dealer cost plus Nabcor fee of $50.00 and that defendant has been ready, willing and able to perform in accordance with said representation.

c. Defendant, at no time, represented that plaintiff would sell 6 to 10 automobiles the first month, or in any subsequent month since the success or failure of any individual dealer depends on the effort, skill and fortune of each individual dealer. It is admitted that under the terms of the written agreement, defendant promised to aid plaintiff in his sales training which defendant did do.

8. Denied. On the contrary it is averred that neither defendant nor its agents, officers, or employees made any fraudulent representations to plaintiff either in the written contract or verbally and that defendant has been ready, willing and able to perform in accordance with its delegations.

9. Denied. On the contrary it is averred that plaintiff has demanded return of the note in the sum of $2500.00 plus some additional cash, but at no time has a demand been made for the return of all moneys paid.

WHEREFORE, defendant prays that plaintiff's Complaint be dismissed.

Ronald H. Israelit

State of Pennsylvania :
SS
County of Philadelphia :

The undersigned, being duly sworn according to law, deposes and says that he is the Secretary-Treasurer of plaintiff corporation, that he is authorized to take this affidavit on its behalf, and that the facts set forth in the foregoing are true and correct to the best of his information, knowledge and belief.

Sworn to and Subscribed
before me this 23 day
of January , 1968

notary public

[illegible] NOTARY PUBLIC
[illegible] County, Pa.
My Commission Expires September 5, 1970

In the Court of Common Pleas of Montgomery County, Pennsylvania

Arbitration No. AR-[illegible]

NO. 69-1918 TERM, 19

JAMES A. LOSTY and
MARGARET LOSTY, his wife

VERSUS

NABCOR, INC.

ARBITRATION

Oath of Arbitrators
Report and Award

NOW, the 26 day of November 1969 we the undersigned, having been named Arbitrators in the above cause, do hereby swear that we will hear the evidence and allegations of the parties, justly and equitably try all matters at variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty days of the date of hearing of same.

Sworn to and subscribed before me this 26 day of November 1969

Deputy

Chairman

Harold T. Commons, Jr.

REPORT AND AWARD OF ARBITRATORS

AND NOW, the 26th day of November, 1969, we, the undersigned arbitrators chosen in the above case, after having been duly sworn, and having heard the evidence and allegations of the parties, do award and find for the [illegible]

[illegible]

in the sum of [illegible] Dollars [illegible]

Substitution of Arbitrators as follows Harold T. Commons, Jr. for Gerald F. Bowen

Hearing was held [illegible], 19

Award filed [illegible], 19

CHAIRMAN

Copies of the above award were mailed to parties or their counsel as Notice of Award on the 11 day of [illegible], 19

By

ARBITRATION [illegible]

SUPREME COURT OF THE
COUNTY OF NEW YORK

In the Matter of the Application

of

THE STATE OF NEW YORK by LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,

Petitioner,

For an order enjoining and restraining
CARL E. PERSON and PARALEGAL PLACEMENT, INC.,
individually and as co-partners doing
business under the partnership name of
PARALEGAL INSTITUTE, and PARALEGAL INSTITUTE,
a partnership,

Respondents,

pursuant to Section 63, subdivision 12 of
the Executive Law.

PETITION

The STATE OF NEW YORK, by its attorney LOUIS J. LEFKOWITZ, Attorney General of the State of New York, respectfully alleges upon information and belief.

AND FOR A FIRST CAUSE OF ACTION
AGAINST PARALEGAL INSTITUTE,
A PARTNERSHIP

FIRST: That all all times hereinafter mentioned, CARL E. PERSON, was and is an individual residing at One Fifth Avenue, New York, New York.

SECOND: That at all times hereinafter mentioned PARALEGAL PLACEMENT INC. was and is a domestic corporation duly organized under the provisions of the Business Corporation Law having filed its certificate of incorporation with the Secretary of State of the State of New York on February 23, 1972.

THIRD: That CARL E. PERSON and PARALEGAL PLACEMENT INC. have duly filed a business certificate as a partnership under the name of PARALEGAL INSTITUTE with the County Clerk of the County of New York on April 10, 1972.

FOURTH: That from April 10, 1972 and continuing to date CARL E. PERSON and PARALEGAL PLACEMENT, INC. have carried on, conducted and transacted a partnership business under the name of PARALEGAL INSTITUTE at 132 Nassau Street, New York, New York.

FIFTH: That the nature of the partnership business was and is the conduct of a private business school to train lay persons as legal assistants.

SIXTH: That respondent partnership offers a course of instruction consisting of 195 hours of lectures over a thirteen week period at a tuition per student originally $750 and subsequently $850.

SEVENTH: That in the course of and conduct of business and to attract students, respondent partnership caused advertisements directed to the public to be published in newspapers, and broadcast on radio stations in the New York metropolitan area. That typical advertisements are annexed hereto, made a part hereof and marked as Exhibit "A".

EIGHTH: That typical of the statements, representations and promises contained in the aforestated advertisements but not all inclusive thereof are the following:

> "Legal Assistant in only 3 months - $9,000 or more to start... earn a high salary starting at $9,000 or more per year.
>
> "You do not study typing or shorthand, because a lawyer's assistant is not a legal secretary - (who herself, by the way, often earns up to $200 or more per week). In fact a lawyer's assistant, when properly utilized, may have her own legal secretary. ---By becoming a lawyer's assistant, you can increase your earning capacity,

fulfil your ambitions to the [illegible],
improve yourself, and become of
high value to your lawyer-employer."

NINTH: That by and through the use of such statements, representations and promises and others of similar import and meaning not specifically set forth herein, respondent partnership represented directly or by implication that:

a) an individual trained by respondent as a paralegal will procure paralegal employment upon graduation.

b) an individual trained by respondent as as paralegal will earn a salary of $9,000 or more to start upon graduation from respondent's school.

TENTH: That the aforesaid statements, representations and promises are false, deceptive and misleading.

ELEVENTH: That in truth and in fact

a) A substantial number of graduates trained by respondent have not obtained employment as paralegals.

b) The vast majority of graduates trained by respondent have not obtained paralegal employment paying a salary of $9,000 or more to start.

TWELFTH: That in response to such advertising, members of the public contacted respondent partnership for further information regarding the offered training.

THIRTEENTH: That in reply to such inquiries concerning the school, respondent partnership sent such members of the public descriptive materials including, a printed form cover letter, a promotional booklet and a printed form application for admission made a part hereof and marked Exhibit "B".

FOURTEENTH: That typical of the statements, representations and promises contained in the aforestated materials are the following:

STARTING SALARY - $9,000 OR MORE PER YEAR

Many legal secretaries in New York City are paid approximately $150 to $225 per week (or $7,800 to $11,700 per year). A lawyer's assistant can start off at approximately $9,000 or more per year, with an opportunity (unlike most legal secretaries) to move into substantially higher salary ranges, according to her competence and motivation. Many firms decide to hire a lawyer's assistant at $9,000 or more per year instead of a recent law school graduate (who would receive a starting salary of up to $10,000 per year, and require on-the-job training before he becomes profitable to the firm."

"PLACEMENT SERVICE AVAILABLE - NO FEE

Paralegal Placement, Inc., an affiliate of Paralegal Institute, offers a placement service to all lawyers' assistants (whether or not graduates of Paralegal Institute). No fee is paid by the lawyer's assistant if we place her in a paralegal position.

"JOB GUARANTEED BY 100% REFUND

Paralegal Institute will refund 100% of your $700 tuition and $50 materials charge in the event that, within 60 days after you graduate, you do not [illegible] an offer of a paralegal position at $9,000 or more per year in the city of your choice (as specified in your Application for Admission); PROVIDED, HOWEVER, that you make a bona fide attempt to seek such employment."

Subsequently modified by respondent to read:

"JOB GUARANTEED BY 100% REFUND

Paralegal Institute will refund 100% of your tuition in the event that, within 60 days after you graduate, you do not have an offer of a paralegal position in the city of your choice (as specified in your Application for Admission); PROVIDED, HOWEVER, that you cooperate in the placement process and make yourself available in the city of your choice for interviews which will be scheduled for you."

FIFTEENTH: That by and through the use of the abovequoted statements, representations and promises respondent partnership has represented, promised and guaranteed to prospective students that:

(a) it would obtain an offer of paralegal employment within 60 days after graduation at a starting salary of $9,000 or more per year or (pursuant to the revised guarantee) it would obtain such offer naming no starting salary or;

(b) a 100 per cent tuition refund would be made in the event that within 60 days after graduation the graduate does not have an offer of a paralegal position in the city of his choice provided the graduate makes a bona fide attempt to seek such employment or (pursuant to the revised guarantee) the graduate cooperates in the placement process.

SIXTEENTH: That induced by the aforesaid statements, representations, promises, and guarantees numerous members of the public applied for admission to the school by completion of the application for admission form.

SEVENTEENTH: That thereafter such student enrollees received a form letter of acceptance from the respondent partnership, samples of which annexed hereto, made a part hereof and marked Exhibit "C".

EIGHTEENTH: That the aforestated form letters of acceptance repeated, in substantially identical language, the representations, promises and guarantees, as alleged hereinabove.

NINETEENTH: That such repeated representations, promises and guarantees served as an additional inducement to such students to commence training at the school to pay the full tuition to the respondent partnership.

TWENTIETH: That said students would not have attended the school and paid the tuition in the absence of the aforestated representations, promises and guarantees of tuition refund.

TWENTY-FIRST: That the said representations, promises and guarantees were false, deceptive and misleading.

TWENTY-SECOND: That said students attended the school and in due course graduated therefrom.

TWENTY-THIRD: That said graduates make a bona fide effort to seek such employment and/or cooperated in the placement process as required by respondent.

TWENTY-FOURTH: That although making such effort and/or cooperating in the placement process, at no time did said graduates receive any offer of paralegal employment or actually obtain any such position.

TWENTY-FIFTH: That such graduates made due demand on respondent partnership for a full refund of their tuition payment as guaranteed by said partnership.

TWENTY-SIXTH: That respondent partnership has failed and refused to honor its guarantee for a refund of tuition payment to a substantial number of its graduates.

TWENTY-SEVENTH: That petitioner has already received over 60 complaints from graduates of respondent's school regarding respondent's business practices as alleged herein.

such complainants by respondent pursuant to its guarantee is approximately $50,000.

TWENTY-NINTH: That by reason of the foregoing the respondent has engaged in repeated fraudulent and illegal acts and practices and has otherwise demonstrated persistent fraud and illegality in the conduct and operation of its business during the times alleged herein within the meaning and intent of Executive Law Section 63 subdivision 12.

THIRTIETH: That it is the firm belief of the Attorney General that this proceeding should be brought on behalf of and in the interest of the public of the State of New York and that unless the relief sought be granted the harm to the public will continue.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST CARL E. PERSON AND PARALEGAL PLACEMENT, INC.

THIRTY-FIRST: That petitioner repeats, reiterates and realleges each and every allegation of the petition numbered FIRST through THIRTIETH inclusive and includes herein all the facts and circumstances therein alleged and recites it with the same force and effect as if set forth at length.

THIRTY-SECOND: That respondent CARL E. PERSON is the President of the respondent corporation and is actively engaged in the direction, management and control of the acts and practices of the corporation including the acts and practices alleged herein.

THIRTY-THIRD: That in order to protect the interests of the State of New York and to render effective such orders as the Court may issue it is necessary that said CARL E. PERSON and PARALEGAL PLACEMENT, INC. be joined as respondents.

THIRTY-FOURTH: That CARL E. PENSCH and PARALEGAL PLACEMENT, INC. have engaged in conduct violative of the meaning and intent of Executive Law Section 63(12) during the times alleged herein.

WHEREFORE, petitioner prays that an Order be issued pursuant to Executive Law Section 63 subdivision 12 enjoining, restraining and prohibiting respondents from further engaging in the fraudulent and illegal acts and practices alleged herein and directing restitution to aggrieved consumer graduates together with the costs of this proceeding pursuant to CPLR § 8303(6).

Dated: New York, New York
May 16, 1973

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Petitioner
Office & P.O. Address
80 Centre Street
New York, New York 10013

A 378

AMY LEWIS TABOR

Plaintiff(s)

against

PARALEGAL INSTITUTE and
PARALEGAL PLACEMENT, INC.

Defendant(s)

Index No.

Summons

Plaintiff's Residence
Address: 29 Old Field Lane
Great Neck, New York

The basis of the venue designated is:

Contract signed in New York County; address of Defendants.

To the above named defendant(s)

You are hereby summoned *to appear in the Civil Court of the City of New York, County of* New York *at the office of the Clerk of the said Court at* #111 Centre Street *in the County of* New York *City and State of New York, within the time provided by law as noted below and to file your answer to the complaint with the Clerk: upon your failure to answer, judgment will be taken against you for the sum of $* 750.00 *with interest thereon from the* 18th *day of* January *19* 73 *together with the costs of this action.*

Dated, the 3rd *day of* April *19* 73

Defendant's Address:

132 Nassau Street
New York, New York

GILBERT J. FORTGANG
Attorney(s) for Plaintiff

Post Office Address and Telephone Number
295 Madison Avenue
New York, New York 10017
Phone: 683-1237

NOTE: The law provides that:

(a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TEN days after such service; or

(b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, *or by any means other than personal delivery to you within the City of New York,* you are allowed THIRTY days *after proof of service thereof is filed with the Clerk of this Court* within which to appear and answer.

INDORSED COMPLAINT

A statement of the nature and substance of the plaintiff's cause of action is as follows:

1st Cause of Action:

Action for damages in the sum of $750 .00, with interest, for breach of contract by defendants.

2nd Cause of Action:

Action to recover $750.00, with interest, moneys had and received, to the defendants' use.

3rd Cause of Action:

Action to recover $750.00, with interest, as a refund pursuant to agreement, no part of which has been paid, although duly demanded.

GILBERT J. FORTGANG
Attorney(s) for Plaintiff

CIVIL COURT OF THE CITY OF NEW YORK,
COUNTY OF NEW YORK

ROBERT S. LEVY,

Plaintiff(s)

against

CARL E. PERSON, individually and doing business under the firm name and style of Paralegal Institute,

Defendant(s)

Index No

Summons

Plaintiff's Residence

Address: 619 North Broadway
Upper Nyack, N. Y. 10[illegible]

The basis of the venue designated is:

Defendant's address

To the above named defendant(s)

You are hereby summoned *to appear in the Civil Court of the City of New York, County of* New York *at the office of the Clerk of the said Court at* 111 Centre Street *in the County of* New York, *City and State of New York, within the time provided by law as noted below and to file your answer to the complaint with the Clerk; upon your failure to answer, judgment will be taken against you for the sum of* $850.00 *with interest thereon from the* 5th *day of* April, *19*73 *together with the costs of this action.*

Dated, the 18th *day of* April, *19*73.

Defendant's Address:

132 Nassau Street
New York, N. Y. 10038

LOUIS J. FELSTINER
Attorney(s) for Plaintiff

Post Office Address and Telephone Number
60 East 42nd Street
New York, N. Y. 10017
Telephone: 661-0077

NOTE: The law provides that:

(a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TEN days after such service; or

(b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days *after proof of service thereof is filed with the Clerk of this Court within which to appear and answer.*

ENDORSED COMPLAINT

A statement of the nature and substance of the plaintiff's cause of action is as follows:

Guarantee of refund of $850. tuition paid by plaintiff to defendant repayable upon defendant's failure to obtain for plaintiff an offer of paralegal employment.

[illegible]

CIVIL COURT OF THE CITY OF NEW YORK,
COUNTY OF NEW YORK

Henry K. Deming,

Plaintiff(s)

against

Paralegal Institute, Inc.

and

Carl E. Person,

Defendant(s)

Index No.

[illegible]

Plaintiff's Residence

Address: 311 East Ninth Str
New York, N.Y. 100

The basis of the venue designated is:

residence of plaintiff

To the above named defendant(s)

You are hereby summoned to appear in the Civil Court of the City of New York, County of New York at the office of the Clerk of the said Court at 111 Centre Street in the County of New York City and State of New York, within the time provided by law as noted below and to file your answer to the complaint with the Clerk; upon your failure to answer, judgment will be taken against you for the sum of $1,500.00 with interest thereon from the 10th day of May 1972 together with the costs of this action.

Dated, the 9th day of January 1973.

Defendant's Address: 132 Nassau Street, New York, New York

Attorney(s) for Plaintiff
Jonathan Shearer
Post Office Address and Telephone Number
244 Riverside Drive
New York, New York 100
865-88

NOTE: The law provides that:

(a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TEN days after such service; or

(b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days after proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

ENDORSED COMPLAINT

A statement of the nature and substance of the plaintiff's cause of action is as follows:

Plaintiff paid defendant Paralegal Institute, Inc. seven hundred fifty dollars ($750.00) in consideration of and under express terms of the contract that defendants would refund this money in full in the event that, within sixty (60) days after plaintiff's graduation from defendant, Paralegal Institute, Inc., plaintiff does not obtain an offer of employment as a paralegal. Plaintiff graduated on or about October 6, 1972. Plaintiff did not obtain an offer of a paralegal position within these sixty (60) days. Plaintiff demanded the refund, pursuant to the contract. Defendants have refused to make refund as per the terms of the contract.

DISTRICT COURT OF THE COUNTY OF NASSAU
FIRST District, Mineola Part

Index No.
Summons

KAREN [illegible],

Plaintiff

against

PARALEGAL INSTITUTE,

Defendant

Plaintiff's Residence
Address:
42 Constable Lane
Levittown, New York

The basis of the venue
designated is:
Plaintiff's residence

To the above named defendant

You are hereby Summoned to appear in this action in the District Court of the COUNTY OF NASSAU, First District, Mineola Part at the office of the Clerk of the said Court at 272 Old Country Road, Mineola, in the County of Nassau, State of New York, within the time provided by law as noted below and to make answer to the complaint which is annexed hereto; upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of this action.

Dated, Mineola, N.Y., the 30th day of March 1973

KOEPPEL SOMMER [illegible] &
MARTONE, P.C.
Attorney( ) for Plaintiff

Defendant's Address:
132 Nassau Street
New York, New York

Post Office Address and Telephone Number
220 Old Country Road
Mineola, New York 11501
(516) 747 300

NOTE: The law provides that:

(a) If this summons is served by its delivery to you personally within the County of Nassau you must appear and answer within TEN days after such service; or

(b) If this summons is served by delivery to any person other than you personally, or is served outside the County of Nassau, or by publication, or by any means other than personal delivery to you within the County of Nassau, you are allowed THIRTY days after the proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

the State of New York.

2. By letter dated June 1, 1972, defendant accepted plaintiff for admission to its paralegal training program.

3. Said letter contained the following guarantee:

> "...this is to acknowledge that Paralegal Institute will refund all of the $700 tuition and $50 materials charge in the event that, within 60 days after you graduate, you do not obtain an offer of a paralegal position of $8,000 or more per year in New York City, as specified in your Application for Admission..."

DISTRICT COURT OF THE COUNTY OF NASSAU
FIRST DISTRICT : MINEOLA PART

- X

KAREN WERBIN, : **VERIFIED COMPLAINT**

Plaintiff, : Index No.

-against- :

PARALEGAL INSTITUTE, :

Defendant. :

- X

KAREN WERBIN, appearing by her attorneys, KOEPPEL SOMMER LESNICK & MARTONE, P.C., as and for her complaint, alleges:

1. The defendant, PARALEGAL INSTITUTE, is a corporation duly organized and existing under the laws of the State of New York.

2. By letter dated June 1, 1972, defendant accepted plaintiff for admission to its paralegal training program.

3. Said letter contained the following guarantee:

> "...this is to acknowledge that Paralegal Institute will refund all of the $700 tuition and $50 materials charge in the event that, within 60 days after you graduate, you do not obtain an offer of a paralegal position of $9,000 or more per year in New York City, as specified in your Application for Admission..."

ant's program, and said guarantee period has terminated.

5. During said entire period plaintiff fulfilled all of the requirements of said guarantee required to be performed by her.

6. In accordance with the terms of said guarantee defendant owes plaintiff the sum of Seven Hundred Fifty ($750.00) Dollars.

7. Although plaintiff has duly demanded payment of said sum, defendant has refused and failed to pay.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of Seven Hundred Fifty ($750.00) Dollars plus interest, together with the costs and disbursements of this action.

KOEPPEL SOMMER LESNICK
& MARTONE, P.C.
Attorneys for Plaintiff
Office and P. O. Address
220 Old Country Road
Mineola, New York 11501
(516) 747-6300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------X

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

- against - :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

---------------------------------------X

REPORT OF MAGISTRATE

70 Civ. 5421

The motion by defendants General Motors Corporation and related defendants to compel answers to certain interrogatories, returnable before Judge Gurfein on June 23, 1972, was referred to the undersigned to hear and report. A hearing was held on June 23, 1972.

I.

National Auto Brokers Corp. (Nabcor), organized in 1966, has developed a system of nationwide brokers to assist individual users in the selection and purchase of any model of a new domestic automobile. The nature of the business is set forth in a securities offering circular dated January 29, 1971 (Ex. D to defs' reply affidavit). The plan is to enable the buyer to purchase at a price lower than the retail price regularly charged by "factory dealers" being the wholesale price paid by factory dealers plus a "make-ready charge", a handling charge, and a brokerage commission. The system members do not supply parts or service. Under the system there are three types of brokers being master brokers who are granted territories within which they may sub-franchise to area brokers, area brokers who may sub-franchise operating brokers, and operating brokers who are franchised solely to sell cars. Of 200 franchises sold 70 were active at the time of the circular.

The present action, naming 63 defendants and 71 co-conspirators, in which the plaintiffs are Nabcor and several of its franchises, is against the four major domestic manufacturers, franchise dealers, automobile dealer trade associations, Better Business Bureaus, newspapers, and financial institutions, the chief claim inthe 27 count complaint being that defendants conspired to boycott the plaintiffs. Plaintiffs sue on behalf of themselves and seven alleged classes.

The time of plaintiffs to move for a class ddtermination pursuant to Civil Rule 11-A was extended to July 17, 1972, and plaintiff's counsel has advised the undersigned that there is an understanding for a further extension. The composition of the classes varies in accordance with the nature of the charge. By stipulation dated April 17, 1972 (par. 2) any discovery prior to July 17, 1972 was prohibited except as "required for the purpose of supporting or opposing any motion to determine whether the plaintiffs may maintain this action or any part thereof as a class action". The purpose was to postpone wide ranging discovery on the merits until a final disposition of the class action issues and to aid the Court in the determination of such issues.

II.

Item 4 of defendants' first set of interrogatories to Nabcor (identical with 6 of their first set to franchisees) inquires as to the details of any claim, legal proceeding or complaint against plaintiffs or any person in connection with the sale of any right to a Nabcor franchise or the performance thereunder including the identity of the complainant, the type and substance of the complaint, and its disposition.

In support of this item defendants urge as follows: Under Rule 23(a)(4) the Court must determine that the representative parties will "fairly and adequately represent the interests of the class". There have been nine law suits against Nabcor by its franchisees charging fraud and misrepresentation in the sale of franchises and breach of franchise agreements; and in the two actions which have gone to judgment the claimants prevailed. A franchisee for the state of Delaware has testified in a deposition in this action to its conflicts with Nabcor and its intention to "opt out" if the class is certified. There is evidence raising a significant possibility that Nabcor engaged in a scheme to defraud its franchisees in the sale of franchises by misrepresentation or concealing the facts with respect to the expected earnings of a franchisee, the riskssof the business, and Nabcor's own financial position. It concludes that these circumstances "which point to bad faith dealing, antagonism, conflict and mistrust between Nabcor and the class it purports to represent raise serious questions as to Nabcor's ability adequately to represent the class in this action" and that "all the facts pertaining to conflicts and litigation within the plaintiff class should be before the court" (Defs' reply memo, p. 2).

Defendants cite various authorities for the view that the representatives must not hold interests antagonistic to the class they seek to represent (Defs' memo, p. 7). However, the only cited case where an antagonistic interest was held to bar a class action is Carroll v. American Federation of Musicians, 372 F.2d 155 (2 Cir. 1967) where the conflict was as to the claims asserted in the action. In Carroll, an anti-trust action charging improper practices by a union against orchestra leaders, it appeared that some orchestra leaders were willing members of the union and were benefitting from the challenged practices. Defendants in urging the discovery stress, moreover, that the matter is not before the Court on the merits but merely on the question of discovery which should be liberally construed.

The position of plaintiffs is as follows: Any conflicts or antagonisms among the members of the class result from Nabcor's alleged non-performance of its obligations under agreements with franchisees and are irrelevant to the anti-trust charges. As stated in their memorandum (p. 2), "defendants' activities as alleged throughout the complaint illegally deprived plaintiffs and their Nabcor franchisees of sources of new automobiles" and the alleged illegal activities "virtually destroyed the business interests of plaintiff Nabcor and all Nabcor franchisees". Plaintiffs rely on Vernon J. Rockler & Co. v. Graphic Enterprises, Inc., 52 F.R.D. 335 (D Minn 1971) which appears to be the only reported authority dealing with the test of conflict urged by plaintiffs. In Rockler the action was under the Securities Acts on behalf of purchasers of securities to recover for false and misleading information in registration data. Plaintiff itself was a broker-dealer which purchased a large block of stock some of which it resold. In opposing a class action it was charged that the plaintiff would be liable to the parties to whom it resold some of the stock. The Court rejected the charge of conflict stating that "the type of conflict proscribed by Rule 23(a)(3) must be as to the "subject matter of the suit" that any potential liability "would not raise a substantial conflict within the class over the precise issues in litigation"; and that "the interests which Rockler is asserting herein are those of a defrauded stockholder". The opinion cites 3-B Moore's Fed. Practice §23.07(3) at 23-403 which states that the "antagonism must be as to the subject matter of the suit". Defendants seek to avoid the force of Rockler on the grounds that (1) discovery was not there involved and (2) in Rockler the possible liability was "a technical one depending solely on the possible resale of stock without adequate investigation of the truth of the registration statement" whereas "Nabcor may deliberately and knowingly have defrauded members of the class which it now seeks to represent" (reply memo, p. 4).

To be sure, the alleged factual nature of the conflict in the present action is different from that involved in Rockler. However, if the doctrine of Rockler - that the antagonism "must be as to the subject matter of the suit" - is adopted then the detail which defendants seek as to complaints would be clearly irrelevant. It is believed that whether the doctrine should be followed or whether in any event the requested discovery is to be allowed are matters more properly to be determined by the Judge by whom the class action issues, including the adequacy of representation, will have to be decided. Accordingly, it is recommended that the motion as to this item be denied at this time without prejudice.

III.

Interrogatories 5, 15 and 16 directed to Nabcor (identical with 7, 12 and 13 of the interrogatories directed to franchisees) seek information as to the termination or rescession of Nabcor franchise agreements and/or complaints made by any independent franchise dealer, independent fleet purchaser, and leasing company. Five months after the service of these interrogatories by defendants, plaintiffs addressed substantially the same interrogatories to the defendants. By stipulation dated December 23, 1971 (Ex. 3, par. 2 to notice of motion) plaintiffs agreed to answer the interrogatories when defendants answer "the substantially identical interrogatories" addressed by plaintiffs or within 14 days after an order sustaining the objections by defendants to the interrogatories or on February 7, 1972 if by that date "Nabcor shall not have moved to compel GM and GMAC to answer the substantially identical interrogatories, whichever is earliest".

Defendants contend that under Rule 26(c) simultaneous discovery is to be directed only "for good cause shown" and that here (1) plaintiffs' failure to move by February 7, 1972 was a waiver of any right to simultaneous discovery and (2) in any event simultaneous discovery would not here be appropriate, this not being a situation involving the invention or discovery or prior use of a patent or process. Plaintiffs cite Eastern Fireproofing Co. v. United States Gypsum Co., 21 F.R.D. 290 (D. Mass. 1957), an anti-trust action in which the Court directed simultaneous discovery as to interrogatories going to the merits of the action. Defendants argue with force that the rationale for simultaneous discovery does not apply to the present interrogatories.

Considering all the circumstances and the stipulation as to the time plaintiffs agreed to answer the interrogatories it is believed that simultaneous discovery should not be required.

Dated: New York, New York
June 26, 1972

Respectfully submitted,

Martin D. Jacobs
United States Magistrate

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

NATIONAL AUTO BROKERS CORP., et al, :

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al, :

Defendants. :

- -x

70 Civ. 5421 TPG

PRETRIAL ORDER NO. 1

U. S. DISTRICT COURT
FILED
OCT 19 1972
S. D. OF N. Y.

A pretrial conference was held on October 12, 1972, wherein the following proceedings were had:

1. Plaintiffs were represented by Carl E. Person, Thomas McManus, of counsel.

2. The following counsel were present representing defendants:

Sidney S. Rosdeitcher
Lewis A. Kaplan
  Paul, Weiss, Rifkind, Wharton & Garrison
  Attorneys for General Motors Corporation,
  General Motors Acceptance Corporation,
  Frederic G. Donner and James M. Roche

Floyd Abrams
Eric Harris
  Cahill, Gordon, Sonnett, Reindel & Ohl
  Attorneys for New York Times Co.

Donald I. Strauber
  Chadbourne, Parke, Whiteside & Wolff
  Attorneys for CIT Financial Corp.

Edward Boyle
  Shearman & Sterling
  Attorneys for First National City Bank

3. On or before October 20, 1972, counsel for General Motors Corporation, et al, shall serve on counsel for plaintiffs a statement setting forth the respects in which they contend

plaintiffs' answers to the following interrogatories are incomplete or otherwise deficient:

(a) defendants' first set of interrogatories, dated June 11, 1971, addressed to plaintiff National Auto Brokers Corp., nos. 1, 2, 6, 7, 8, 9, 11, 12, 14, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28 and 29;

(b) defendants' first set of interrogatories, dated June 11, 1971, addressed to plaintiffs Courtesy Auto Brokers, General Auto Sales & Leasing, Inc., Dale Strimpel, Robert B. Heim, Louis H. Jamele, Nabeor of East New York, Inc., and Alfred H. Young, Sr., nos 1, 2, 3, 4, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26 and 27;

both as modified by the stipulation dated December 23, 1971.

4. If plaintiffs shall dispute the existence of any of the alleged deficiencies set forth in such statement, they may, request an appointment with the Court to obtain a ruling within three business days after receipt of the statement, ~~serve~~ upon notice to Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., attorneys for General Motors Corporation, et al. ~~notice of application to this Court for a ruling with respect to the disputed deficiencies.~~ The parties are directed to attempt in good faith to negotiate any differences.

TPG

5. The motion of defendants, General Motors Corporation, General Motors Acceptance Corporation, Frederic G. Donner and James M. Roche, dated May 25, 1972, for an order directing (i) plaintiff National Auto Brokers Corp. to answer interrogatory 4 of defendants' first set of interrogatories addressed to it and (ii) plaintiffs Courtesy Auto Brokers, General Auto Sales &

Leasing, Inc., Dale Strimpel, Robert B. Heim, Louis H. Jamele, Nabcor of East New York, Inc., and Alfred H. Young, Sr. to answer interrogatory 6 of defendants' first set of interrogatories addressed to them, be and the same hereby is granted.

6. Plaintiff National Auto Brokers Corp. shall serve full and complete answers to interrogatories 4, 5, 15 and 16 of defendants' first set of interrogatories addressed to it and shall serve supplemental answers fully correcting such deficiencies as may be noted in the statement referred to in paragraph 3 hereof on or before November 10, 1972.

7. Plaintiffs Courtesy Auto Brokers, General Auto Sales & Leasing, Inc., Dale Strimpel, Robert Heim, Louis H. Jamele, Nabcor of East New York, Inc., and Alfred H. Young, Sr. shall each serve full and complete answers to interrogatory 6 of defendants' first set of interrogatories addressed to them and shall each serve supplemental answers fully correcting such deficiencies as may be noted in the statement referred to in paragraph 3 hereof on or before November 10, 1972.

~~8. If plaintiffs shall fail to comply with the aforesaid provisions of this order (to the extent that the information called for by said interrogatories is available to them) within the period specified above, or within such further time as may be granted by this Court, on motion, for good cause shown, defendants may apply to this Court for an order precluding plaintiffs from maintaining this action as a class action. Such failure of plaintiffs shall be a ground for preclusion unless plaintiffs shall establish to the satisfaction of this Court:~~

TPG

TPG

~~a) That plaintiffs believed, reasonably and in good faith, that they had complied with the provisions of this order;~~

~~or~~

~~b) That any failure so to comply was due to causes beyond their control.~~

It is hereby so ORDERED.

Dated: New York, New York
October 19, 1972.

Thomas P. Griesa
THOMAS P. GRIESA, U.S.D.J.

JAN 30 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

---x

70 Civ. 5421 TPG

STIPULATION

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. With respect to the Second Set of Interrogatories with Request to Produce Documents dated December 1, 1972, each plaintiff shall:

(a) serve upon counsel for the undersigned defendants within 30 days from the date hereof, sworn answers to Interrogatories 1(c), 1(d), 5, 6, 9 through 11 (inclusive), 17 through 19 (inclusive), 20 (insofar as it seeks information with respect to paragraph 168(v)(A) of the complaint), and 21 through 23 (inclusive) and

(b) produce for inspection and copying at the offices of counsel for the undersigned defendants on February 22, 1973 at 10:00 a.m. each document the identification of which is requested by the Interrogatories referred to in subparagraph (a) hereof.

2. Plaintiffs shall answer Interrogatories 7 and 8 of said Second Set of Interrogatories with Request to Produce Documents with respect only to the members of the alleged class, viz. Nabcor franchisees who became Nabcor franchisees before December 10, 1970. These Interrogatories shall be answered so as to provide the requested information as of December 1, 1972. Nothing herein shall prejudice defendants' right to seek the requested information as of the other dates contained in said Interrogatories or with respect to Nabcor franchisees who became Nabcor franchisees on or after December 10, 1970.

3. Each plaintiff shall produce for inspection and copying at the time and place designated in paragraph 1 hereof each document the identification of which is requested by Interrogatories 4, 26, 31, 32 and 33 of said Second Set of Interrogatories with Request to Produce Documents.

4. Paragraph 4 of the stipulation, by and between the undersigned, dated December 20, 1972, be and the same hereby is modified by striking therefrom the dates January 31, 1973 and February 5, 1973 and inserting in place thereof the dates February 14, 1973 and February 21, 1973, respectively.

5. This stipulation is without prejudice to the positions of any of the parties with respect to interrogatories

and document requests other than those specifically referred to herein.

Dated: New York, New York
January 23, 1973

Carl E. Person

Carl E. Person
Attorney for Plaintiffs
132 Nassau Street
New York, New York
Tel.: (212) 349-4616

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By
Lewis A. Kaplan
Attorneys for Defendant General Motors Corporation, General Motors Acceptance Corporation, Frederick G. Donner and James M. Roche
345 Park Avenue
New York, New York 10022
Tel.: (212) 935-8000

SO ORDERED:

Thomas P. Griesa
U.S.D.J.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON REGIONAL OFFICE
1921 JEFFERSON DAVIS HIGHWAY
CRYSTAL MALL BUILDING NUMBER TWO
P.O. BOX 2247
ARLINGTON, VIRGINIA 22202

WRO:EAK:mrs

7838

January 15, 1971

Carl E. Person, Esq.
150 East 61st Street
New York, New York 10021

Re: National Auto Brokers Corporation
24W-3015

Dear Mr. Person:

This is with reference to the amendments to the Regulation A filing of subject company submitted on December 14, 1970. We have the following comments with respect to the amended material.

Offering Circular

Page 5 - Risk Factors to be Considered

Paragraph 7 should be revised to (1) delete the words "and claims against others"; (2) to disclose the fact that the litigation is likely to cost a great deal more than $50,000 and that the Issuer may not be able to obtain the necessary funds, in which case it may have to abandon the litigation thereby completely losing all of the funds that had been used up until that time and (3) to delete the reference to "Business - Competition".

Page 7 - Business - Organization of the Company

The last two sentences of this section should be deleted. To mention the Issuer's litigation, at this early stage, in any other section but the "Litigation" section may give the false impression of its present importance to the Issuer.

Page 7 - Marketing of New Automobiles - General

In the second sentence of the last paragraph on this page give the number of cars sold by the Issuer in each of the last four years. in addition to the aggregate figure.

Page 8 - Marketing of New Automobiles - NABCOR Systems

In the second paragraph of this section state the number of limited production autos sold in each of the last four years in addition to the aggregate figure.

L-201 (6-69)

Please delete the last sentence on this page, for reasons previously stated.

The fact that the Issuer has had difficulties in obtaining deliveries in the past should be fully disclosed in the last paragraph on this page.

As supplemental information please supply a letter from the Issuer stating that it is no longer experiencing the difficulties in making fleet purchases, if true, that are set forth in its complaint.

Page 9

Unless factually supported the first paragraph on this page should be deleted.

The fact that in the past some dealers have refused to honor warranties on NABCOR sold automobiles (as stated in the Issuer's complaint), should be set forth in the third paragraph on this page, without reference to the litigation pending.

Page 9 - Brokerage Fees Upon Sale of Trade-Ins

Please state clearly whether the Issuer's new trade-in policy applies to all franchisees or only those sold after May 1970.

Page 10 - Financing of Automobile Purchases

The nature and the amounts of the financial commitments mentioned in the first paragraph on this page should be set forth. If there are no firm commitments, reference to any commitments should be deleted and the lack of firm commitments disclosed.

Page 12 - The NABCOR System

In the last paragraph on this page please delete the reference to the "Litigation" section. However, please add a sentence to this paragraph stating the number of franchises that are due to be terminated over the next twelve months by lapse of the five year franchise period.

Page 14 - Competition

In view of the fact that the Issuer's competition exists on a local as well as national level and the lack of factual substantiation, please delete the first paragraph on this page. Also delete the second sentence of the second paragraph, in line with our previous comments.

Pages 31 - 32 - Management

The term "the effective date" used in reference to the contemplated salaries of Messrs. Frank and Anthony Maiorana should be changed to

A 400

7840

"the commencement of this offering", in view of the fact that the Regulation does not provide for an "effective date".

Page 39 - Litigation

The second paragraph on this page should be deleted and replaced by one pointing out the fact that this litigation will likely take years to complete; that the Issuer may not be able to obtain all the funds necessary to prosecute a lengthy litigation; that for the most part it is a class action, the entire cost of which is being borne by the Issuer whereas any recovery will have to be divided among the members of the class; the defendants may have valid defenses and counter claims to the charges made in the Issuer's complaint, that even if the Issuer prevails there may not be any percuniary recovery, and that there is no assurance that the litigation will prove successful.

Mr. Person's opinion as to the merit should be deleted as it is too early in the litigation to express a non-speculative opinion.

General

As supplemental information please inform this office of the Civil Action No. of the Issuer's suit and whether it has been served on all the party defendants.

As supplemental information, please supply a statement from the Issuer that to the best of its knowledge the policy with regard to warranty work, as set forth in the letters dated May 1967, is still applicable.

It does not appear that a Section 4(2) exemption from the registration requirements will be available to all "key employees" under the Issuer's stock option plan, therefore, please supply as supplemental information an undertaking by the Issuer to the effect that it will notify this office, upon the issuance of any options, of the name and position of the optionee and that no shares will be issued pursuant to any options that are granted unless they are registered or an exemption is available.

Paragraph marked (5) of the escrow agreement for the underwriter's warrants should be deleted as it is in conflict with the restrictions upon the exercise of such warrants.

Please confirm that the information regarding the lawsuits against the Issuer is up to date.

The recent Justice Department investigation into the possible ban on all fleet discounts by automobile manufacturers and the adverse ramifications of such a ban on the Issuer's operations should be fully disclosed.

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Financial Comments

Supplementally furnish this office a schedule of the Accounts and Notes Receivable as of July 31, 1970. This schedule should reflect the amount of actual collections in these receivables.

It is suggested that a caption entitled "Commitments and Contingent Liabilities" be placed in the Liability Section of the Balance Sheet and be referenced to Note 6.

It is recommended that the gain in Expiration of Franchise Deposits be reflected net of Federal Income Taxes.

Please support supplementally the statement that $122,000 is available as net operating loss carryovers in light of the positive amount of retained earnings. Also please inform us of the loss for 1967 on an accrual basis.

****

You realize, of course, that we may have additional comments upon receipt of the amendments and/or supplemental information to the filing.

All amendments to any document which is a part of the filing, including the Offering Circular, must be filed in quadruplicate as amendments to the Notification and signed in the same manner as the original Notification. In this connection, please refer to Rule 255(b) and (d) and Rule 256(f) of Regulation A. All correspondence and supplemental information should be filed in duplicate.

Your attention is directed to the requirements of Rules 256 and 258 of Regulation A regarding the use of selling literature in connection with this offering. Sales literature includes any correspondence to potential investors such as transmittal letters that will precede or accompany the Offering Circular, "tombstone ads", subscription forms, and any other material which may be considered part of the offering of the securities. All such material must be filed at least five days prior to any use thereof.

Since the suggested amendments are not substantial it will be permissible to submit the amended pages of the Offering Circular instead of a complete Circular.

Sincerely yours,

Alexander J. Brown, Jr.
Regional Administrator

By Ruth D Appleton
Ruth D. Appleton, Chief
Interpretations and Small Issues

cc: James W. Tracey, III, Esq.

NABCOR INC.

SUMMARY OF LOAN, INTERCOMPANY AND MAIORANA TRANSACTIONS

FOR THE PERIOD DECEMBER 19, 1972
TO JANUARY 31, 1973
(Unaudited)

Compiled for
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON

rice
aterhouse & Co.

NABCOR INC.

SUMMARY OF LOAN, INTERCOMPANY AND MAIORANA TRANSACTIONS

FOR THE PERIOD DECEMBER 19, 1972 TO JANUARY 31, 1973

(Unaudited)

Total outside loans		$95,620
Less - Payments to Maioranas:		
Loans (net)	$26,053	
Salaries	53,004	
		79,057
Available for operations		$16,563
Net distribution of outside loans:		
Nabcor		$ 8,276
Pocono		5,721
Leisure		2,566
		$16,563

NABCOR INC.

SUMMARY OF LOAN, INTERCOMPANY AND MAIORANA TRANSACTIONS

FOR THE PERIOD DECEMBER 19, 1972 TO JANUARY 31, 1973

(Unaudited)

Transaction	Nabcor	Pocono	Leisure	Combine 3 compan
December 19, 1972:-				
Proceeds of loan (Fidelity)	$45,620.00			$45,620.
Payments to:				
Frank Maiorana	(31,915.00)			(31,915.
Anthony Maiorana	(12,000.00)*			(12,000.
	1,705.00			1,705.
January 2, 1973:-				
Proceeds of loan (Provident)	25,000.00			25,000.
Payments to				
Frank Maiorana	(11,874.71)			(11,874.
Transfers to:				
Pocono	(11,539.90)	$11,539.90		
Leisure	(12,851.39)		$12,851.39	
January 5, 1973:-				
Payments to:				
Frank Maiorana		(6,000.00)	(7,000.00)	(13,000.0
Anthony Maiorana		(5,000.00)	(5,000.00)	(10,000.0
Loan from Frank Maiorana	11,736.45			11,736.4
	470.45	539.90	851.39	1,861.7
January 19, 1973:-				
Payments to:				
Frank Maiorana		(5,669.00)	(1,335.00)	(7,004.0
Anthony Maiorana		(3,750.00)	(1,250.00)	(5,000.0
Transfer to Nabcor	1,100.00	(400.00)	(700.00)	
January 22, 1973:				
Proceeds from loan (Provident)		15,000.00	10,000.00	25,000.0
January 26, 1973:				
Transfer to Nabcor	5,000.00		(5,000.00)	
	6,100.00	5,181.00	1,715.00	12,996.0
	$ 8,275.45	$ 5,720.90	$ 2,566.39	$16,562.7

*Includes a $500.00 payment made on December 26, 1972.

rice
aterhouse & Co.

SIXTY BROAD STREET NEW Y [illegible]

April 6, 1973

To Paul, Weiss, Rifkind, Wharton & Garrison

At your request we have compiled an unaudited summary of loan, intercompany and Maiorana transactions for the period December 19, 1972 to January 31, 1973 from photocopies of what is purported to be the financial records of Nabcor Inc., consisting of the general ledger for the period August 1, 1972 to January 31, 1973 and the cash receipts and cash disbursements journals, and certain other related schedules, which were marked as deposition exhibits "Anthony Maiorana Exhibits 1, 3, 4, 5, and 6" in the action of National Auto Brokers Corp., et al., plaintiffs, against General Motors Corporation, et al., defendants. Inasmuch as we have not made independent verification of these records this compilation does not constitute an examination in accordance with generally accepted auditing standards and accordingly we express no opinion on the fairness of the amounts included therein.

Our work consisted of the following for the period December 19, 1972 to January 31, 1973:

1. We reviewed the Nabcor cash disbursements and the Nabcor cash receipts journals for all transactions with Pocono Futures, Leisure Life and the Maioranas.
2. We reviewed schedules of Pocono Futures and Leisure Life for all transactions with Nabcor and the Maioranas. These schedules did not show transactions for any period prior to January 1, 1973.
3. We traced and agreed all items extracted from the receipts and disbursements journals of Nabcor to the general ledger.
4. We analyzed the loan and officers' salary general ledger accounts of Nabcor.
5. We reviewed the cash receipts journal and cash disbursements journal for material loans from, and repayments to outsiders.
6. We summarized the loans, intercompany and Maiorana transactions as extracted from the cash journals and the prepared schedules to show the net effect of borrowings from outsiders.

This compilation was made for its sole use in the action of National Auto Brokers Corporation against General Motors Corp., et al.

Price Waterhouse & Co.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- x

NATIONAL AUTO BROKERS CORP., et al., : 77-7037

Plaintiffs-Appellants, : SDNY 70 Civ. 5421A (TPG)

-against- :

GENERAL MOTORS CORPORATION, et al. :

Defendants-Appellees. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Elizabeth C. Droser , being duly sworn, deposes and says:

That on the 3rd day of August , 1977, affiant served a copy of the annexed and foregoing

Joint Appendix - Volumes 1 through 16

(hereinafter, the "Document") on all Defendants' attorneys named in the list of attorneys attached hereto, by depositing a copy of the Document in a securely-wrapped envelope, with first-class (or priority) postage pre-paid, addressed as set forth on said list, the last-known address of each of said attorneys, respectively, in the United States Post Office at 90 Church Street in the City, County and State of New York.

Elizabeth C. Droser

Subscribed and sworn to before me
this 3rd day of August , 1977.

Carl E Pers

Notary Public

CARL E. PERSON
Notary Public, State of New York
No. 31-3068710
Qualified in New York County
Commission Expires March 30, 1979

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